154-439

RECORD, CASE No. 15,281.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No, ~~1311~~ 908

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

VICTOR M. BACKUS, AS TREASURER OF MARION COUNTY, INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED MARCH 23, 1893.

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1 THE STATE OF INDIANA, *ss:*

Be it remembered that heretofore, to wit, on the 28th day of October, 1892, the same being the 137th judicial day of the May term, 1892, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, by John T. Dye, Albert Baker, and Edward Daniels, its attorneys, filed in the office of the clerk of the supreme court of the State of Indiana a transcript of the record and proceedings of the Marion circuit court of said State, in a cause wherein said Cleveland, Cincinnati, Chicago and St. Louis Railway Company was plaintiff and Victor M. Backus, treasurer of Marion county, Indiana, was defendant, together with an assignment of errors endorsed thereon; which transcript and assignment of errors are in the words and figures following, to wit:

Be it remembered that among the records of proceedings had, papers filed, rulings made, exceptions noted, judgments rendered, decrees entered, &c., in the circuit court of the county of Marion, State of Indiana, are the following in the cause of—

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, Treasurer of Marion Co. } No. 6133.

And be it also remembered that heretofore, to wit, on the 2nd day of May, A. D. 1892, the above-named plaintiff, by its attorneys, filed in the office of the clerk of said circuit court its complaint against said defendant in the words and figures following—that is to say:

(MEMO.).—On the 28th day of May, 1892, the plaintiff herein filed an amended complaint in this cause, which will be inserted in this transcript hereafter. The original complaint is there-
2 fore omitted.)

And afterwards, to wit, on the 13th day of May, 1892, being the 11th judicial day of the May term, 1892, of said Marion circuit court, the following proceedings were had herein before the Hon. Edgar A. Brown, sole judge thereof, viz:

"Comes now the defendant, by counsel, and moves the court to require the plaintiff to separate its complaint herein into paragraphs and number the same, making as many paragraphs as there are separate and distinct causes of action stated or attempted to be stated therein; and now come the parties, by counsel, and the court, being fully advised, overrules the said motion; to which ruling the defendant at the time excepts, and is ruled to answer over."

And afterwards, to wit, on the 14th day of May, 1892, being the 12th judicial day of the May term, 1892, of said court, before the same hon. judge, the following proceedings were had herein, viz:

"Comes now the defendant, by counsel, and files a demurrer to the complaint and to each subdivision and specification thereof in the words and figures following:

STATE OF INDIANA, } ss:
Marion County, }

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, Treasurer, &c.

No. 6133. Circuit Court. Demurrer.

The defendant demurs to the complaint herein and to each subdivision and specification thereof, and for cause of demurrer says that said complaint does not state facts sufficient to constitute a good cause of action.

3 W. A. KETCHAM,
Att'y for Defendant."

And the defendant now tenders his bill of exceptions No. 1 herein on the ruling of the court in overruling his motion to separate the complaint into paragraphs; which said bill of exceptions is now signed by the court, filed, and made a part of the record herein, and is in the words and figures following—that is to say:

(Not on file.)

And afterwards, to wit, on the 28th day of May, 1892, being the 24th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come now the parties, by counsel, and, leave of the court being first had and obtained, the plaintiff files its amended complaint in this cause in the words and figures following—that is to say:"

4 STATE OF INDIANA, }
County of Marion. }

Marion Circuit Court.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Ind.

Complaint to enjoin collection of taxes, to have pretended assessment of the State board of tax commissioners declared void, and to quiet title.

John T. Dye, Baker & Daniels, for plaintiff.

5 STATE OF INDIANA, }
County of Marion. }

Marion Circuit Court.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Ind.

Complaint to enjoin collection of taxes, to have pretended assessment of the State board of tax commissioners declared void, and to quiet title.

The plaintiff, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, a corporation duly organized and existing under the laws of the States of Ohio and Indiana complains of the defendent, Victor M. Backus, treasurer of Marion county, Indiana; and says: That the plaintiff, as such corporation, is now and for several years last passed, has been engaged in the business of a com-
6 mon carrier of freight and passengers, and in operating a system of railroads in the States of Ohio, Indiana and Illinois, of which the following lines are in the State of Indiana, to wit:

The Indianapolis division, extending from the city of Indianapolis to the State line between Ohio and Indiana, 83.84 miles;

The St. Louis division, extending from the city of Indianapolis to the State line between Indiana and Illinois, 80.47 miles;

The Chicago division, extending from La Fayette, Indiana, to the State line between Ohio and Indiana, near the city of Lawrenceburg, Indiana, 158.81 miles;

Columbus, Hope & Greensburg railway, extending from Greensburg, Indiana, to Columbus, Indiana, 24 28 miles;

Fairland, Franklin & Martinsville railway, extending from Fairland, Indiana, to Martinsville, Indiana, 38.23 miles;

Cairo, Vincennes & Chicago railway, extending from Vincennes, Indiana, to the State line between Indiana and Illinois, 6.85 miles;

Cincinnati, Lafayette & Chicago railway, extending from Templeton, Indiana, to the State line between Indiana and Illinois, 23.75 miles;

The Vernon, Greensburg & Rushville railroad, extending from North Vernon, Indiana, to Rushville, Indiana, a distance of 44.54 miles;

The Cincinnati & Southern Ohio River railroad, extending from Lawrenceburg to Aurora, 3.69 miles;

The Whitewater division, 62.95 miles.

That the defendant, Victor M. Backus, is the county treasurer of Marion county, Indiana, and is a resident of said county;

7 That all of said railroads are operated and controlled by this plaintiff as one general system, and this plaintiff is liable for the operating expenses of all of said lines of railroad, and is also liable for all taxes legally assessed against any and all of said lines.

By section 77 of the act of March 6, 1891, of the General Assembly of the State of Indiana, any person, company or corporation owning, managing, operating or constructing a railroad, shall make and file with the county auditor of the respective counties in which the railroad may be located, a statement or schedule, verified by the oath of such person, or the president and secretary of such corporation, showing the property held for right of way, and the length of the main and all side and second tracks and turnouts, in such county and in each city or town in the county through which the road may run, and describing each tract of land, other than a city or town lot, through which the road may run, in accordance with the United States surveys, giving the length and width of the strip of land held in each tract and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way.

In section 78 it is provided that "such right of way, including the superstructures, main, side, second track and turnouts, turntables, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation and denominated 'railroad track,' and shall be described in the assessment thereof as a strip of land extending on each side of said railroad track and embracing the same together with all the stations and improvements thereon, commencing at a point where such track crosses the boundary line in entering the county, township, city or town tending to the point where such track crosses the boundary line leaving such county, township, city or town to the point of termination in the same, as the case may be, containing — acres more or less (inserting the name of the county, township, city or town, or boundary line of the same, and number of acres and length in feet)."

Section 81 provides that all personal property of any railroad, except that specifically taxed, shall be listed and assessed in the county, township, city or town, wherever the same may be, on the first day of April of each year.

Section 82 provides that all real estate of any railroad company other than that denominated "railroad track" with all the improvements thereon shall be listed as lands and lots, as the case may be, in the township, county, town or city where the same is located.

Section 84 provides that all such property except railroad track and rolling stock shall be listed and assessed by the assessor and treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms, "lands," "lots" and "personal property."

Section 85 provides that at the same time that the lists or schedules are heretofore required to be returned to the county auditor, the person, company or corporation running or operating or constructing any railroad in this State, shall, under the oath of such

person, or the secretary or superintendent of such company or corporation, return to the auditor of state sworn state-
9 ments of the property denominated railroad track, giving the length of the main and side or second tracks and turnouts, and showing the proportions in each township and county, and the total in the State; and, secondly, the rolling stock, whether owned or hired, giving the length of the main track in each county, and the entire length of the road in this State.

Section 87 provides, "The auditor shall annually on the meeting of the State board of tax commissioners lay before the said board the statements and schedules herein required to be returned to him, and said board shall assess such property in the manner hereinafter provided."

Section 123 provides, "The State board or any member thereof shall have power to subpœna witnesses and examine witnesses, to administer oaths, and shall have access to and the power to order the production of any books or papers in the hands of any person, company or corporation whenever necessary in the prosecution of any inquiries necessary or proper in their official capacity."

Section 129 provides, the State board of tax commissioners shall assess railroad property and equalize the assessment of real estate, as provided in said act, at its true cash value as defined by said act, according to their best knowledge and judgment, so as to equalize the assessment of property throughout the State, and that they shall have power to send for persons, books and papers, examine records, hear and question witnesses and to administer oaths to such persons.

Section 130 requires the members of the board to subscribe an oath for the faithful performance and impartial discharge of their duties as members of said board.

10 The plaintiff shows that by section 78 of said act the railroad property denominated "railroad track" was defined and limited and made to include only the right of way, including structures, side or second tracks and turnouts, turn-tables, telegraph poles, wires and instruments and other appliances and stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property), which property said act prescribes shall be held to be real estate for the purpose of taxation.

The plaintiff shows that by section 80 of said act, the railroad property denominated rolling stock was defined and limited and made to include only the movable property belonging to the railroad company.

The said State board of tax commissioners were not authorized by any provision of said act to assess any railroad property other than that defined as aforesaid, as "railroad track" and "rolling stock" and that said State board of tax commissioners had no authority whatever to include in the valuation placed by them upon said railroad property the market value of the stocks and bonds of the railroad companies, or the gross or net earnings of said companies or the franchises thereof.

That in accordance with the provisions of said act of the General Assembly of the State of Indiana, the plaintiff, as a corporation owning and operating the various lines of railway hereinbefore set forth, returned to the county auditors of each of the said counties in the State of Indiana, respectively, a detailed statement, listing all the main and side tracks and turnouts, right of way, rolling stock and other property of said railway company in said respective
11 counties in the State of Indiana, and giving the true cash value of all the rolling stock and all improvements and stations located on the right of way and the true cash value of said main and side tracks, turnouts and right of way.

That the said statements and schedules were filed in the office of the county auditors in the said respective counties between the first day of April and the first day of June, 1891, and were duly verified in accordance with the provisions of said act.

That said plaintiff also filed in the office of the auditor of state, at Indianapolis, between the first day of April and the first day of June of the year 1891, in accordance with the provisions of said act, a schedule showing all its property denominated "railroad track," including the length of the main track, side track and turnouts and right of way, and also showing the improvements on said right of way, and the true cash value thereof, and of the rolling stock owned or hired and used on said railroad, and also showing the total listed valuation of all tangible property of said company in the State of Indiana as provided in said act.

That said schedules or statements so filed in the offices of said county auditors and the said auditor of state were received by the said county auditors and the said auditor of state as the schedules due from said company, in accordance with the provisions of said act, and that no notice was ever given to said plaintiff or to any of its officers, agents or servants, that said schedules and statements of property and the values therein contained were not full and true statements of all the property of said company and the value thereof.

That thereafter said county auditors, and each of them,
12 made out and transmitted to the auditor of state of Indiana, abstracts showing the length of main and side tracks and the value of each separate item of railroad property, denominated "railroad track" and "rolling stock," as returned by said company to said county auditors in accordance with the provisions of said act.

That on the third day of August, 1891, there convened at the office of the auditor of state, at Indianapolis, in accordance with the provisions of said act, a pretended State board of tax commissioners of the State of Indiana, composed of Alvin P. Hovey, governor; Claude Mathews, secretary of state; J. O. Henderson, auditor of state, and I. N. Walker and Joseph Gwin, commissioners; said commissioners having been appointed by the governor, in accordance with the provisions of said act.

That thereafter the auditor of state, in obedience to said act, laid before the said pretended State board of tax commissioners the said

statements and schedules of the property of said railway company and the true cash value thereof returned to him, as required by said act, by this plaintiff, and the said abstracts transmitted to him by said county auditors as aforesaid.

Plaintiff shows that by said returns, verified by affidavit according to law, the railroad track of various lines of railroad owned and operated by this plaintiff in the State of Indiana were valued as shown in the table following, and the values as returned by this plaintiff were increased and altered and the various lines assessed by including, as hereinafter stated, other property which said board had no authority to assess, and certified to the auditor of state, as shown in the following table:

13 Division.	1891.	Valuation per mile.		
		Main track.	Second main.	Side track.
Indianapolis division	Returned	$9,000	$3,000	$2,000
	Assessment	27,900	8,000	4,000
St. Louis division	Returned	6,000		1,500
	Assessment	28,700		4,000
Chicago division	Returned	9,000		2,000
	Assessment	28,100		4,000
Columbus, Hope & Greensburg railroad	Returned	3,000		800
	Assessment	11,400		2,000
Fairland, Franklin & Martinsville railroad.	Returned	2,000		800
	Assessment	6,400		2,000
Cairo, Vincennes & Chicago railway	Returned	2,000		
	Assessment	12,000		3,000
Cincinnati, Lafayette & Chicago railway.	Returned	8,000		2,000
	Assessment	31,900		4,000
Vernon, Greensburg & Rushville railroad.	Returned	3,000		800
	Assessment	7,500		2,000
Cincinnati & Southern Ohio River railroad.	Returned	3,000		800
	Assessment	4,750		2,000
White Water railroad	Returned	3,000		1,000
	Assessment	4,300		2,500

Said board certified to the auditor of state as follows:

"The State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State, and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon and the same was ordered to be spread upon the record and to stand as the assessment of the railroad property—denominated railroad track, rolling stock and improvements on right of way—for the year 1891, which assessment is in the words and figures, to wit:"

Value per mile of main track, second main and side tracks, rolling stock and improvements of right of way and in daily use for railroad purposes, as fixed by the State board of tax commissioners for the purpose of taxation for the year 1891.

14 Following which certificate was a tabulated statement.

Plaintiff shows that the alterations and increases of value in the returns so made by it as aforesaid of the various lines of railroad owned and operated by it in the State of Indiana are illegal and void, and the assessment placed upon the railroad track and rolling stock and other property of the various lines of railroad operated by this plaintiff hereinbefore mentioned, is illegal and void for the following reasons, to wit:

Specification I. The act of the General Assembly of the State of Indiana, entitled, "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, provides for the taxation of certain property of railroads described in sections 77, 78, 79 and 80 of said act as "railroad track" and rolling stock according to its value; and provides under section 129 of said act, that the State board of tax commissioners shall convene annually in the office of the auditor of state for the purpose of assessing railroad property, and they shall not be bound by any reports or estimates of value of railroad property, real estate or other property, as returned to the county auditors or to the auditor of state, but shall appraise and assess said property at its true cash value as defined by said act according to their best knowledge and judgment; said act makes an assessment of the value of the railroad track and rolling stock of the various railroads in the State, made by said State board of taxing commissioners, final and conclusive and irrevocable; it provides for no appeal from their judgment and finding as to the value of such railroad track and rolling stock; it provides for no review of the proceedings of said State taxing board; it provides for no mode whatever for confirming or contesting the assessment and finding of said State board of taxing commis-

15 sioners as to the value of said railroad property in ordinary courts of justice or in any other method. The said act thus imposes upon said State board of taxing commissioners the exercise of judicial functions in determining the value of said property and making an assessment thereof, but wholly fails to provide for due process of law in the exercise of such judicial functions, in this:

a. It does not provide for any notice whatever to the railroad companies or the owners, controllers or lessees of the railroad track and rolling stock, or the persons operating the same, the value of which it authorizes said tribunal to assess, of the action of said board before the same is final and irrevocable.

b. Nor does it give to the said railroad companies or the owners, controllers or lessees of the railroad track and rolling stock, or the persons operating the same, the value of which it authorizes said board to determine, any right to a hearing before said board, or any right to defend and protect their rights before said board, before the assessment becomes fixed and irrevocable.

c. It does not give any right to the said railroad companies or owners of said railroad track and rolling stock, or the parties whose interests are involved, to prove any fact which would be a protection to their property or would throw light upon its value.

d. It does not provide any means for compelling the attendance of witnesses, by parties whose rights are to be affected, before this tribunal, exercising judicial functions. It does not give the parties whose rights are to be affected by this assessment, any legal right to produce witnesses before said tribunal, or to have them sworn and examined; it does not give the parties whose rights are to be affected by the judicial action of said board, any right to cross-examine witnesses who may be adduced against them by said board or others.

16 *e.* It does not provide any orderly proceeding adapted to the nature of the case in which any hearing whatever can be had before said tribunal exercising judicial functions, by the parties whose rights are to be affected by its decision.

f. It does not require the action of the board to be based upon evidence adduced openly, or given under oath and subject to cross-examination, but expressly empowers said board to assess said property according to their best knowledge and judgment, thus authorizing them to act arbitrarily upon their private knowledge and information. And while said act authorizes said State board to send for persons, books and papers, and examine records and hear and question witnesses, it does not make it their duty to hear evidence adduced by parties whose rights are to be affected, nor does it give to such parties any right to have witnesses produced or sworn or examined by said board, nor does it provide any method by which an inquiry can be had as to the value of said railroad property in an orderly proceeding adapted to the nature of the case. Said act creates a tribunal exercising judicial functions and authorizes it to act upon its own knowledge and judgment without giving to the parties interested any right to be present or to produce witnesses or have them sworn, or even to know the grounds and basis upon which the tribunal acts in depriving them of their property, all in violation of the 14th amendment to the Constitution of the United States, and the constitution of the State of Indiana.

Specification II. The act of the General Assembly of the State of Indiana, entitled, "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved

17 March 6, 1891, denies to persons and corporations owning and operating railroads in the State of Indiana the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States, in this, among other things, to wit:

a. Said act provides, section 98, that real property in the State of Indiana, other than railroad track shall be assessed by township assessors, elected by the citizens of the several townships, who shall assess said real estate at its true cash value, and it is made by said act the duty of said assessors, for the purpose of enabling them to determine the value of such real estate, to examine the same and

all buildings and structures of every kind: Whereas, said act provides, section 129, that railroad track shall be finally and conclusively assessed by the State board of tax commissioners without any examination whatever of the buildings and structures upon, or real estate embraced in, said railroad track, by the State board of tax commissioners, or by any other persons, as a basis of such assessment, and authorizes said board to assess said railroad track according to their own knowledge and judgment without making any provision for an inspection of said railroad track, without requiring them to hear evidence of persons who have made an inspection or examination of said railroad track, thus authorizing said board to place an arbitrary assessment upon the value of the railroad track without personal inspection thereof and without knowledge or information derived from inspection as to the value of said railroad track and the structures thereon; thus denying to corporations and persons owning and operating railroads the equal protection which is granted by this act to owners of all other kinds of prop-
18 erty by requiring it to be assessed by assessors who have made a personal inspection of the same and examination of its buildings and structures.

b. Said act provides, section 114, for a county board of review, which shall meet on the first Monday after the fourth of July annually, and that two weeks previous notice of the time, place and purpose of said meeting shall be given by the county auditor in some newspaper of general circulation printed and published in the county, and if no newspaper be published in the county, then by posting notices in three public places in each township in the county, which board shall have power to hear the complaint of any owner of personal property and to equalize the valuation of property, and shall correct all errors in the names of persons and descriptions of property in said list and in the assessment and valuation of property thereon, and shall pass upon each valuation and enter the valuation as fixed by it in a separate column. The county board may on sufficient cause being shown, or on their own motion, correct the assessment or valuation of any property in such manner as in their judgment will make the valuation thereof just and equal, thus insuring to the owners of all kinds of property except railroad property notice of the meeting of the said board and an opportunity to be heard and to make complaints as to unjust valuations. Said act also provides that appeals shall lie from the decision of any county board of review to the State board of tax commissioners, which shall hear and determine the same in such manner as may by its rules be prescribed, and certify its decision, which shall be final, to the proper county auditor, thus insuring to all persons owning property in the State of Indiana, except corporations and persons owning and operating railroads, the right to make complaints before a judicial
19 tribunal as to unjust assessments by township assessors, before a board exercising judicial functions, and a right to be heard upon such complaints, and a right to appeal from the decision of such county board of review, and a right to a hearing upon such appeal before the State board of tax commissioners before the assess-

ment shall become final and conclusive; whereas, corporations owning and operating railroads in the State of Indiana as to railroad track and rolling stock are denied not only the right to have the property assessed upon personal inspection as other real estate is assessed, but they are deprived of the right to make complaints of erroneous or unjust assessments before any judicial tribunal, and are deprived of the right of appeal from any unjust or erroneous decision of such judicial tribunal, and their property is required to be assessed by persons who have made no personal inspection thereof and who may be wholly unacquainted with its value, according to their knowledge and judgment, without any such right to make complaints before a tribunal exercising judicial functions, or to be heard upon such complaints; thus depriving the owners of railroad property of the equal protection which the law insures to the owners of all other classes of property, of making complaints as to erroneous assessments, and of being heard before a tribunal exercising judicial functions, upon such complaints.

c. Said act provides that the owners of all personal or movable property in the State of Indiana shall return lists to the township assessor, which shall be returned by the township assessor to the county assessor. It further provides that the values fixed in said list and accepted by such assessor shall not be added to or
20 altered without notice to the owner of the property so returning the list, thus protecting him from an arbitrary increase of assessment without his knowledge and without an opportunity to be heard; whereas, said act provides that corporations and persons owning rolling stock shall make a return thereof to the county auditors and to the auditor of state, and the State board of tax commissioners shall not be bound by any reports or estimates as to the value of railroad property as returned to the county auditors or to the auditor of state, but shall appraise and assess such property at its true cash value according to their best knowledge and judgment,—without first giving any notice to said corporations or persons,—without giving any hearing to such corporations or persons, thus depriving railroad corporations and persons owning railroad property of the equal protection which the law gives to every other person, that his property shall not be arbitrarity assessed without notice and information and without an opportunity for a hearing.

d. Said act gives to the owners of all other classes of property a right to appeal from the decision of the county board of review to the State board of tax commissioners, and requires the State board of tax commissioners to hear and determine such appeal in such manner as shall by its rules be prescribed; whereas, it authorizes said board of tax commissioners to fix the value of railroad property and rolling stock finally and irrevocably without any hearing whatever, and confers no right to a hearing upon the owners of said railroad property and rolling stock in any orderly proceeding adapted to the nature of the case, and confers upon them no right to compel the attendance of witnesses, or to introduce witnesses or to have them sworn or examined before said board, or to cross-examine
21 witnesses who may be adduced against them, thus depriving

them of the equal security under the laws granted to every one on similar terms, to prevent unjust assessments, and subjecting them to a degree of insecurity against excessive taxation to which other citizens are not subjected, and depriving them of the equal protection of the laws granted to other citizens to prevent the imposition of unequal burdens upon their property.

e. By said act of March 6, 1891, all other citizens are entitled to have their property assessed by township assessors elected by the people of the township in which said property is situated and to have such assessment reviewed by the county board of equalization, elected by the citizens of the county in which said board sits, the decision of which county board is final and conclusive unless an appeal shall be taken therefrom; whereas, railroad companies and corporations and persons owning railroad track and rolling stock are compelled to submit to have their property assessed by a board, the members of which are not elected by the people, but are selected by the appointment by the governor of the State of Indiana, and who are not directly responsible to the people for their action; thus, depriving railroad corporations and owners of railroad track and rolling stock of the equal protection of the laws, securing all others against unjust and partial assessments, in that the assessments are made by persons who are elected by the people and responsible to them for their action.

Specification III. The assessment of the property of this plaintiff, made by the State board of tax commissioners of the State of Indiana, is void and illegal, because in making such assess-
22 ment said board, assuming to exercise the powers conferred by the State of Indiana upon them in the act of March 6, 1891, to assess railroad track and rolling stock of the railroads in said State, denied to the plaintiff The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation existing in the State of Indiana, the equal protection of the laws contrary to the fourteenth amendment to the Constitution of the United States, in this, to wit:

a. That said State board of tax commissioners, after the returns made by this plaintiff to the auditor of state had been submitted to it, and while acting as such board of tax commissioners by authority of the State, and as officers and agents of the State of Indiana to make an assessment of values of railroad track and rolling stock for the purposes of general taxation, being clothed by said State with the judicial function of assessing the value of said railroad track and rolling stock for the purposes of taxation, and after the returns of the railroad track and rolling stock owned and operated by this plaintiff, as hereinbefore set forth, made under oath, had been laid before said board by the auditor of state as said law requires, the said board wholly disregarded said returns so made under oath as to the value of the property of this plaintiff and wholly failed to cause to be produced before it or sworn and examined by it a single witness as to the character and value of the railroad track and rolling stock of this plaintiff to be assessed by it, and wholly failed to inspect or examine said railroad track or cause said rail-

road track to be inspected or examined by any witness, or to hear the testimony of any witness who had inspected or examined said railroad track or rolling stock or who was acquainted with its character and value, said commissioners being allowed by law to
23 sit for only forty (40) days, and having met on the 3d day of August, they did, on the 8th day of September, being the 36th day of their term, wholly disregarding the sworn returns of the plaintiff herein, without having heard any evidence on the subject, arbitrarily assess the railroad track and rolling stock of this plaintiff, returned as aforesaid, at a sum greatly in excess of the actual cash value thereof, and did not give to this plaintiff any notice of any increase of the returns made, as aforesaid by this plaintiff, until after the expiration of the said forty days and the final adjournment of said board, thus depriving this plaintiff of any opportunity to vindicate the correctness of its returns or to protect itself against the imposition of an unjust burden placed upon it or to question the correctness and propriety of the action of the board before it had become final and irrevocable, thereby depriving this plaintiff of the due process of law to which the citizens of Indiana are entitled under the constitution of said State and of the United States.

b. The State board of tax commissioners of the State of Indiana, while exercising the judicial functions of assessing the value of railroad track and rolling stock under the act of the General Assembly of the State of Indiana, of the 6th day of March, 1891, and while acting as officers of said State and by its authority in assessing the railroad track and rolling stock in said State, after the returns as required by law, sworn to by the proper officers of the plaintiff, had been submitted to it by the auditor of state, as said law requires, did on the 18th day of August, after the adjournment of the regular meeting of said board, meet privately and in the night-time, and without notice to this plaintiff of any kind whatever, of said
24 meeting, or the purposes thereof, and without the knowledge of this plaintiff invite and permit one F. J. Van Vorhis, who was then an attorney-at-law, in the employ of the county of Marion and the State of Indiana, and retained especially for the purpose of increasing the assessment of railroads having property in said county, as compared with the assessment thereof for the year 1890 and previous years, and did permit said Van Vorhis, to make statements of fact and suggestions and arguments at great length, affecting the value of railroad property of the plaintiff, intended and calculated to increase the assessment of said property above its true cash value and above the former assessments thereof by the officers of the State of Indiana. Said statements of fact were made by said Van Vorhis and heard and received by said board, for the information of said board, as to the value of plaintiff's railroad track and rolling stock, and acted on by said board, but he was not sworn as a witness, nor were said statements made under oath, nor were they made in public and open session of said board, but at a meeting which was not public, at an unusual time, at which this plaintiff was not present and of which it had no notice or information whatever, thereby depriving this plaintiff of the right to be present at a

hearing of its own case, of the right to require the witnesses, who made statements of fact before said board for its information, to be sworn, and of the right to cross-examine them, and of knowing what statements had thus been made affecting its rights. Whereby said plaintiff says that said board of tax commissioners while acting for and representing the State of Indiana in the exercise of the judicial functions of assessing the value of railroad property, by its action denied to this plaintiff the due process of law, and the
25 right to be present and to have the witnesses who testified against it examined under oath, and the right to cross-examine them, thus depriving it of the equal protection of the laws, which the Constitution of the United States insures to every person of being present at the hearing of his own case before a tribunal exercising judicial functions, and of having witnesses testifying against it, sworn and cross-examined.

Specification IV. The plaintiff shows that by the provisions of said act above set forth, it was the duty of said board acting for and in behalf of the State of Indiana to faithfully and impartially appraise and assess the railroad track as defined in said act and the rolling stock at its true cash value, according to their knowledge and judgment, and, although this plaintiff under the provisions of said act, had no right to introduce witnesses and to have a hearing before said board as to any change or increase of the valuation of its property as aforesaid, still said board was empowered to make inquiry and to ascertain, by evidence and the examination of witnesses, such value, and were clothed with judicial functions which could not be performed without examination and inquiry and a hearing of evidence, and it was the duty of said board to make inquiry, and hear evidence before arbitrarily changing the valuation placed upon such railroad track and rolling stock by plaintiff, and to make reasonable effort to inform themselves by competent evidence before placing a value on the said railroad track and rolling stock.

Plaintiff says that said board of tax commissioners and each and every member of said board were persons inexperienced as to the value of railroad track and rolling stock of railroad companies and had
26 no special information or knowledge as to the cost of materials and construction of railroad track or as to the value thereof, but were wholly without experience and skill touching the value of said property of this plaintiff; and further, that said board of tax commissioners and neither member of said board had ever made any examination of the various lines of the plaintiff's road in the State of Indiana, and were unacquainted with the physical condition and character and value of the railroad track, and rolling stock of said plaintiff used upon the lines of plaintiff's railroad above set forth, and they were wholly unprepared by reason of the want of any information or knowledge had by said tax board to form a just and fair estimate of the value of the railroad track and rolling stock which it was their duty to assess, as said board well knew.

The plaintiff shows that it made its returns to the various county auditors and to the auditor of state for the various lines of railroad

hereinbefore set forth as required by law, fixing under oath the value of its rolling stock and railroad track, which returns were regularly and duly submitted to said State taxing board by the auditor of state, and notwithstanding the fact that all of the members of said board were wholly ignorant and uninformed touching the values of railroad track and rolling stock and had made no examination or inspection, and had no information based upon evidence other than that contained in plaintiff's returns, as hereinbefore set forth as to the value of the railroad track and rolling stock of the various lines of this plaintiff's railroad, as said board well knew, and notwithstanding it was their duty to make inquiry and to hear evidence before changing or altering the returns made by this plaintiff, for the purpose of obtaining information upon which they could make a fair and just assessment of such property; yet,

27 wrongfully and in violation of its duty in the exercise of the judicial functions, with which it was charged, said board

a. Wholly failed to make any examination of the property which they were required by said act to impartially and fairly assess; and

b. Neglected to cause any inspection or examination to be made by any competent persons and reported to them of the character and value of the railroad track and rolling stock which they were required to assess, in order to ascertain the value thereof; and

c. Wholly failed to examine a single witness under oath as to the character and value of the railroad track and rolling stock, concerning which it was the duty of said board to make inquiry for the purpose of ascertaining its true value; and

d. Wholly failed to cause to be produced before said board any persons, or books, or papers which were competent evidence to be examined by said board touching the value of said property, and proceeded on the 8th day of September, 1891, being the thirty-sixth day of said session of said board and four days before the end of said session, to appraise and assess the railroad of this plaintiff; and

e. Wholly failed to give to this plaintiff any notice of any increase in or addition to the returns filed under oath, as required by law of this plaintiff, and laid before the said board by the auditor of state, until after said four days had expired and until it was too late for this plaintiff to file any complaint touching said assessment, or to ask any hearing touching the increase of the value of the property as returned by this plaintiff and the additions to said returns as fixed by said board;

And thereby deprived this plaintiff of the right to question

28 or contest the valuation fixed by said board upon its railroad track and rolling stock, and deprived this plaintiff of the right to have any hearing touching the increase of value of its said railroad track and rolling stock as returned by this plaintiff, and deprived this plaintiff of the right to be heard touching the assessment placed by said board upon its railroad track and rolling stock.

And this plaintiff says that the conduct of said board in failing to give to this plaintiff any notice of the action of said board in in-

creasing the assessments of its property and increasing and adding to the values as returned by it, was intentional and done with the purpose to prevent this plaintiff from having an opportunity to question or contest, or to be heard as to, such increase of the value of its property as returned by it and as to the assessment made by said board, before it should be final and conclusive and irrevocable.

The plaintiff further shows that on the 13th day of August, being the 15th day of the session of said board, said board, after having entered at the usual hour an order of adjournment until 10 o'clock of the succeeding day, met after 7 o'clock in the evening in a meeting of said board, which was not open and public and of which meeting no notice whatever was given to this plaintiff, and of which meeting this plaintiff and no officer of this plaintiff nor any one representing this plaintiff had any notice or knowledge or information of any kind, and at which meeting no one was present except said board and its secretary and F. J. Van Vorhis, who had been employed for the specific purpose of causing the assessment of this plaintiff and of other railroad properties to be increased as compared with the assessments of former years, by the board of commissioners of Marion county, of which said board was fully informed, and said board did there invite and permit said F. J. Van Vorhis, with the knowledge that he was so employed, in the absence of this plaintiff, to make statements of fact concerning the values of the railroad track and rolling stock of this plaintiff for the information of said board and to make statements as to the law by which they should be governed in making the assessments and to argue to said board at great length upon assumed statements of fact and law, urging said board to increase the assessment of this plaintiff and of the various railroads in the State of Indiana to a sum grossly in excess of the true value of the railroad track and rolling stock and of the sums at which said property had been assessed in previous years by including in such assessment other values which said board had no right to assess, and did hear the case of this plaintiff and allowed said Van Vorhis to make statements of fact not under oath and furnish hearsay evidence and argue the case of this plaintiff in a secret meeting, of which this plaintiff had no notice or information whatever.

And this plaintiff further states that in such statements said Van Vorhis urged upon said board that they should assess the franchises as well as the railroad track and rolling stock of said railroad companies, and presented authorities and decisions to said board, in the absence of this plaintiff and without notice to it, to sustain the ground that said board should not limit their assessment to railroad track and rolling stock, but should embrace in their assessment of railroad track the franchises of this company, and made to said board statements as to the average net earnings of the various lines of the plaintiff's road, derived from hearsay and made erroneous statements as to the amount of capital stock and as to the market value thereof, and as to the funded debt of said roads, with a view to show the value of such franchises, and urged upon said board that they should assess the railroad track and

rolling stock at a sum which would produce at six per cent. the amount of the net earnings as stated by him, and insisted that said road should be assessed upon a six per cent. earning basis and upon the basis of the market value of the stocks and bonds.

This plaintiff shows that many of the statements of fact made by said Van Vorhis to said board were incorrect and the statements of law were false. Said Van Vorhis was not sworn when he made such statements for the information of the board. This plaintiff had no opportunity to be present or to cross-examine said Van Vorhis, and received no notice from said board as to the matters about which he testified as aforesaid and made statements, and this plaintiff was, by such action of said board, deprived of the right to be present during the hearing of its own case as required by due process of law.

And afterwards, without having caused any witnesses to be sworn, or having examined any other witnesses besides said Van Vorhis as to the value of said railroad track and rolling stock, and without having made any inspection or examination of said rolling stock or said railroad track, and without having made any inquiry upon competent evidence, as it was their duty to do, said board arbitrarily, on the 8th day of September, four days before the completion of its term, pursuing the suggestions made by said Van Vorhis in the absence of this plaintiff, made an assessment, not of the railroad track and rolling stock as the law requires, but of the plaintiff's "railroad," including its franchises, based upon such erroneous information and evidence heard and taken by them in the
31 absence of this plaintiff and without notice, which assessment was based upon "the cost of construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of said roads," and this without having heard any competent evidence whatever as to the cost of construction or equipment, or as to the market value of its stocks and bonds, or any competent and legal evidence of the gross and net earnings of said roads other than contained in returns made by plaintiff, and wrongfully and wilfully and arbitrarily in violation of the duties imposed upon them, agreed that such assessment of the valuation per mile of the plaintiff's "railroad" (including its franchises), and of the various roads in the State should be ordered to be spread upon the record and should stand as the assessment of the railroad property denominated "railroad track, rolling stock and improvements on right of way for the year 1891," and reported to the auditor that:

"Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

"In arriving at the basis for the estimate of said values, the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same."

This plaintiff shows that said assessment was not an assessment of the railroad track and rolling stock, but was an assessment of the plaintiff's railroad and embraced many elements, including
32 franchises and earnings and stocks and bonds, which said board had no legal authority to assess.

And plaintiff shows that said board was required by law to assess said railroad track and rolling stock at its true cash value as defined by said act, that is, the usual selling price, which could be obtained therefor at private sale and not at forced or auction sale, and that said board was not authorized to assess other property of said railroad, tangible or intangible; that said assessment so made by said board embraced other property of said road besides railroad track and rolling stock, and purports by the certificate of said taxing board to be an assessment of the "several railroads and parts of roads" in the State, and not an assessment of the "railroad track" and "rolling stock," but was "spread upon the record to stand as an assessment of the railroad property denominated 'railroad track,' rolling stock and improvements on right of way."

Plaintiff further states that no witnesses were examined as to the true cash value or selling price of said railroad track and rolling stock, and the said board arbitrarily disregarded and rejected the sworn valuations placed upon said property in the returns made by this plaintiff, and without any other evidence under oath, and without examining any other witnesses touching the matter, and without any inspection or examination made by any member of said board of said property, did assess said railroad at a value greatly in excess of the true cash value of this plaintiff's railroad track and rolling stock, on the 1st day of April, 1891, and in making said assessment said State board, for the purpose of increasing the aggregate amount of all assessments in the State of Indiana, with-
33 out increasing the assessments of the property in said State, in counties through which plaintiff's road runs other than railroad property, as the same had been made by township officers for the year 1891, and reported to said board, did assess plaintiff's railroad track at an arbitrary value for taxation, and at a value more than twice as great as the true cash value thereof returned by the plaintiff.

Plaintiff further shows that said board was charged with the duty of equalizing the assessment of real estate and railroad property, and that said board was fully advised at the time of making such assessment of said railroad track, that the real estate as assessed by the local assessors in the State of Indiana, was assessed at not more than 80 per cent. of its cash value, and yet with this knowledge they arbitrarily fixed a valuation upon railroad track and rolling stock of a sum more than twice its cash value.

Plaintiff shows that in making such assessment, said board in fact made an assessment upon the net earnings of this defendant made in carrying interstate commerce through the States of Ohio, Indiana and Illinois; that while said board agreed that said assessment should stand as an assessment of the main track, side track and rolling stock and improvements on right of way, it was in fact

based upon the earnings of this plaintiff made in the business of transportation over its lines in the States of Ohio, Indiana and Illinois in carrying on interstate commerce, and it was agreed "that it should be spread of record and to stand as the assessment of 'railroad track' and rolling stock" while in fact no assessment of railroad track was made by said board.

Plaintiff states that said assessment was made by said board of the property of this plaintiff as a unit, and that no separate assessment of the various lines as reported to this board was made
34 by it, and that in making such assessment of the property of this plaintiff as a unit, they considered the earnings made by this plaintiff in the States of Illinois and Ohio. And plaintiff shows that no separate account was reported to said board of the various lines of said road, nor is such separate account required to be returned by law; that the railroad track of some of the lines in Ohio is greatly more valuable than the railroad track of other of its lines in Indiana and that it owns and controls valuable lines of railroad in Illinois and in Ohio, with valuable terminals which contribute largely to these earnings, and that in making the assessment of this road and its franchises as said board did, they considered and based their judgment and fixed their valuation upon the earnings of such other lines of plaintiff in other States, and placed on the lines in Indiana above set forth an increased valuation by assessing net earnings on lines in Ohio & Illinois.

Plaintiff further shows that the line of road described as the Chicago division, runs from the State line between Indiana and Ohio into the city of Cincinnati, where it owns terminal properties of very great value; and that the twenty miles of road in Ohio is of very much greater value than any equal number of miles of plaintiff's lines in Indiana. And plaintiff owns terminal properties of great value in Cleveland, Columbus and other cities out of Indiana, and holds large amounts of stocks of other roads, and personal property in other States, which are represented by plaintiff's stock. Yet the board assessed the property of this plaintiff as a unit, and in doing so took into consideration and included in its return to the auditor the value of and assessed the property and values in the States of Ohio and Illinois, and without the jurisdiction of the taxing laws of the State of Indiana, and then arbitrarily distributed the gross value of the property, including the franchises of this plaintiff, over its several lines and agreed that, "it should stand as the assessment of railroad track and rolling stock." And plaintiff further charges that the assessment made by said board was arbitrarily and grossly unjust and that the valuation fixed upon the property was wholly unreasonable, so much
35 so as to be apparent to all persons of reflection, and to make it impossible to be regarded as the expression of the honest judgment of said board upon the valuation of railroad track and rolling stock.

Plaintiff charges that said board did arbitrarily and of mere will, through prejudice and caprice, without having made personal inquiry or examination of the value of said railroad track and rolling

stock, without having caused any such examination to be made, without having called before them any person who had knowledge touching the subject or caused any witnesses to be examined under oath, fix the valuation of the plaintiff's railroad track and rolling stock at a sum which is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroads a greater burden of taxation than upon other property of equal value, and that the valuation placed by said board upon plaintiff's railroad track and rolling stock, as above set forth, was not the result of the honest judgment of said board, based upon their own knowledge or upon evidence or inquiry, but such valuation made by said board was made without knowledge or information other than contained in the returns of plaintiff as to the value of said main track and rolling stock and without making any reasonable effort to acquire such knowledge or information, and the action of said board in increasing the valuations made in the returns and schedules under oath by this plaintiff was willful and arbitrary and made with the fraudulent intent to increase the amount of taxes to be paid by this plaintiff in a much greater proportion than the increase of the amount of taxes to be paid by the owners of other property in the State of Indiana other than railroad property.

36. And that said board adopted a rule or system of valuation of railroad track and rolling stock, which was designed by them to operate unequally and to violate a fundamental principle of the Constitution, and applied said rule not only to the property of this plaintiff, but to all the railroad corporations of Indiana, by which rule they assessed railroad track and rolling stock, not at its true cash value, but according to the value of its franchises, the amount of the earnings of the owners of said track made from interstate commerce carried on in this and other States, and according to the value of the stock issued by such company and the amount of its bonded debt, and by and in pursuance of such rule assessed said railroad track and rolling stock at a far higher value than its true cash value, and higher than other property in the State of Indiana is assessed for taxation in proportion to its value, thus violating a fundamental principle of the constitution of Indiana, requiring a uniform and equal rate of assessment and taxation, and a just valuation of all property for taxation.

37. Specification IV*a*. The plaintiff shows that said board, in making the assessment of railroad property, adopted a rule or system of valuation of the railroad track and rolling stock of railroad companies owning railroads partly within and partly without the State of Indiana, designed by them to operate unequally and to discriminate against railroad companies owning railroad property partly within and partly without the State of Indiana, and in favor of railroad companies owning railroad track and rolling stock wholly within the State of Indiana, and in violation of a fundamental principle of the Constitution applied said rule to the railroad track and rolling stock of this plaintiff and to the railroad track and rolling stock of other railroad companies owning railroads partly within and partly without the State of Indiana, by which rule, in arriving

at the basis for the estimate of the value of the respective railroads and parts of roads within the State of Indiana, they considered and took into account the market value of stocks resting upon and representing railroad property, real and personal, wholly without the State of Indiana, and the market value of bonds resting upon and secured by railroads without the State of Indiana and which did not rest upon and were not secured by or upon railroad track within the State of Indiana, and by which rule they also considered gross and net earnings of roads and parts of roads without the State of Indiana owned by railroad companies owning railroad track and rolling stock within the State of Indiana differing greatly in value and earning capacity from the roads within the State of Indiana owned by such companies, thereby discriminating against railroads partly within and partly without the State of Indiana, and, in pursuance of said rule, said board assessed the railroad track of this plaintiff at a far higher sum than its true cash value and at a far higher sum than the railroad track and rolling stock of railroad companies owning railroads wholly within the State of Indiana are assessed in proportion to its true cash value, thus violating a fundamental principle of the Constitution, requiring a uniform and equal rate of assessment and taxation and a just valuation of all property for taxation.

Specification V. For the reason that, in accordance with the said act of the legislature of the State of Indiana, the plaintiff filed with the auditor of state a duly verified statement of the gross earnings and net earnings of said plaintiff; that a large proportion of said gross earnings and net earnings was the earnings derived from interstate commerce, being commerce between points in the State of Indiana and points in adjoining and other States; that no division was made by said plaintiff in its schedule or statement filed with the said auditor of State, of its earnings, into earnings derived from commerce in the State of Indiana, and earnings derived from
38 interstate commerce, and no such division was called for by said alleged State board of tax commissioners, nor was any such division required by said act of the legislature of Indiana; nor is it possible to make such division between earnings derived from interstate transportation, and transportation wholly within the State of Indiana; said board did not assess nor make any valuation of various lines of railroad track returned by plaintiff as the law requires, but assessed and included in the valuation returned by said board to the auditor of state the value of the franchise and business of plaintiff in carrying on interstate commerce by taking the gross earnings of plaintiff made in carrying on interstate commerce as well as commerce in Indiana and out of the State of Indiana on other lines of railroad owned and operated by plaintiff in the States of Ohio and Illinois, including lines wholly in other States operated but not owned by plaintiff, and earnings on such lines wholly in other States never brought into this State, nor mingled nor blended with plaintiff's property in this State, and deducting therefrom the operating expenses of plaintiff and fixing a sum as the value of said franchise and business of plaintiff upon all lines operated by

it as a unit which would produce at six per cent. the net earnings thus arrived at, and distributed such valuation and assessment of the value of the franchise and business of plaintiff as a unit among its various lines in the State of Indiana in proportion to mileage, thus taxing the franchise and business of plaintiff in carrying on interstate commerce, and laying burdens on interstate commerce contrary to the Constitution of the United States.

Specification VI. The act of the General Assembly of the State of Indiana, entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, is in violation and contravention of section 22 of article IV of the constitution of the State of Indiana.

Specification VII. The act of the General Assembly of the State of Indiana, entitled "An act concerning taxation, repealing
39 all laws in conflict therewith and declaring an emergency," approved March 6, 1891, is in violation and contravention of section 23 of article I of the constitution of the State of Indiana.

Specification VIII. The act of the General Assembly of the State of Indiana, entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, is in violation and contravention of section 1 of article X of the constitution of the State of Indiana.

Specification IX. And the plaintiff further avers that said pretended State board of tax commissioners was illegally organized and constituted and had no power or authority to act as such board and to perform the acts which it pretended to perform, as herein set forth, and that the pretended assessment of railroad track, side tracks and rolling stock of the plaintiff was and is illegal and void, and that all taxes assessed by said pretended board are likewise void and of no force and effect whatever for the reasons following, to wit:

a. The office of chairman and member of said State board of tax commissioners is a State office, separate and distinct from the office of governor, and that the said act in providing that the governor shall fill the office of chairman and a member of said board is in conflict with article V, section 24 of the constitution of the State of Indiana, which provides that neither the governor nor lieutenant governor shall be eligible to any other office during the term for which he shall have been elected.

b. Said act, in providing for the appointment by the governor of two commissioners and members of said board purports to create two administrative and executive offices and to fill the said offices so created, continually with persons appointed by the governor,
40 thereby making the incumbents of said offices continually appointive and not elective, whereas all executive and administrative State officers must be elected by the people.

c. That said act, in providing for the appointment of said two commissioners as members of said board and defining their functions, powers and duties, enjoined upon said two appointed State officers, confers judicial powers, functions and duties, whereas all judicial offices must be filled by election by the people.

d. The final valuation and assessment of property for ad valorem

taxation which purports to extend against and establish upon that property a lien for taxes based upon and measured by the value of that property, is a judicial act, and in conferring such power of assessment and valuation upon said board, judicial powers, functions and duties are granted to and enjoined upon said board, while three members thereof are the governor, secretary of state and auditor of state, who are the executive and chief administrative officers of the State. Wherefore the provisions of said act constituting said board and defining its functions, powers and duties are in conflict with article III, section 1 of the constitution of the State of Indiana, which provides that the powers of the government are divided into three separate departments, the legislative, the executive (including the administrative) and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in said constitution expressly provided; and the plaintiff avers that in said constitution it is not expressly provided that the governor, secretary of state or auditor of state shall exercise such functions.

And plaintiff, in support of all and each of said specifications, says it has heretofore paid in full to each of the county treasurers of
41 the several counties through which said lines of railroad pass, all taxes assessed against it excepting only the taxes assessed against its railroad track and rolling stock, and as to such railroad track and rolling stock, the plaintiff has heretofore paid in full all taxes assessed against the valuation of the same as listed and returned by plaintiff, and all taxes assessed against them upon the true cash value of said railroad track and rolling stock on the first day of April, 1891, except to the treasurer of Tippecanoe county, to whom it tendered the sum due upon the true cash value of its railroad track and rolling stock, and does now tender the same, and brings the same into court, to wit, $2,508.42, for said treasurer of Tippecanoe county. The amounts of taxes paid to the treasurers of the various counties for the year 1891 are as set forth in the following table, and the amounts of taxes upon railroad track and rolling stock of plaintiff, assessed upon the excessive valuations of said board of tax commissioners over and above the true cash value thereof, and over and above the value returned by this plaintiff, and which the defendants now severally threaten to collect, are shown in the second column of figures in the following table, to wit:

42 County.	Amount paid by plaintiff.	Excess claimed by defendant.
Bartholomew	$2,034 20	$1,675 84
Benton	2,519 25	9,585 95
Boone	6,170 59	5,200 58
Boone (Peoria and Eastern)	384 29	1,600 60
Clay	1,912 51	1,520 34
Clinton	1,055 63	1,000 77
Dearborn	2,983 39	8,187 25
Decatur	3,477 77	9,401 18
Delaware	2,959 83	9,187 76
Fayette	935 07	706 65
Fountain	1,657 35	6,540 94
Franklin	2,726 42	1,972 32
Hancock	1,592 30	1,287 46
Hancock (Peoria and Eastern)	567 93	5,469 24
Hendricks	2,305 67	6,949 79
Hendricks (Peoria and Eastern)	1,364 39	6,343 61
Henry	729 87	6,971 42
Jennings	687 55	3,177 29
Johnson	1,587 64	1,311 77
Knox	545 79	379 22
Madison	4,800 70	4,207 34
Marion	13,453 59	11,215 85
Marion (Peoria and Eastern)	873 02	3,055 24
Marion (formerly "O., I & W.")	810 41	2,177 51
Montgomery	1,986 53	6,453 81
Morgan	1,319 00	977 14
Newton	369 57	239 44
Parke	368 63	323 80
Putnam	1,462 50	4,837 31
Randolph	2,755 35	8,188 02
Randolph (Peoria and Eastern)	797 30	7,924 07
Ripley	2,320 94	1,876 20
Rush (V. G. & R.)	1,057 19	786 53
Shelby	2,950 29	6,937 09
Tippecanoe	2,508 42	7,785 71
Vermillion	103 31	944 51
Vigo	2,628 22	7,836 78
Warren	590 81	2,081 36
Wayne	434 17	1,426 48

That said taxes, so as aforesaid illegally assessed upon said additional valuations added and fixed by said pretended State
43 board of tax commissioners, in excess of the valuations returned by plaintiff, are a cloud upon the title of the plaintiff's real estate in each of said counties, and greatly injure and impair the value thereof.

The plaintiff further shows that the action of said board in thus arbitrarily and wantonly placing a grossly unjust and unfair valuation upon the plaintiff's property was final, conclusive and irrevocable; that the statutes of Indiana give plaintiff no right to appeal therefrom or to review the same, and provide no mode whatever by which the plaintiff can contest or question said valuation in a judicial proceeding or in any other manner before the taxes extended upon such assessment become a lien upon plaintiff's said property; that said defendants are threatening to collect said sums. And this plaintiff has no relief whatever against the arbitrary and unjust action of said board, and of said defendants in attempting to collect said sums, except by a proceeding to enjoin the same in a court exercising the power which was formerly exercised by courts of equity.

Plaintiff further states that said grossly arbitrary and unjust assessment casts a cloud upon the title of plaintiff's real estate, to wit, the south half of square 79, in the city of Indianapolis, and other real estate occupied by the right of way in the county of Marion, to wit, 80 feet wide, winding through the townships of Franklin, Warren, Lawrence, & Center and Wayne, in the county of Marion, in the State of Indiana, and that it has no method of removing said cloud except by an appeal to a court exercising the powers formerly exercised by a court of equity to declare said assessment void, and to enjoin the collection of said taxes.

Plaintiff further states that it has paid to the treasurers of the various counties named herein the full amount of taxes due upon its property as returned by it, and in some instances an amount greater than the returns made by it, and that it has paid all the taxes which were justly due upon the true cash valuation of
44 the railroad track and rolling stock of this plaintiff, of its various lines in the State of Indiana, and it is now willing and offers to pay any additional sum which this court may find, in equity and justice, is due upon a fair valuation of its property, as taxes for the year 1891.

Plaintiff says it is not seeking to escape its just share of the burdens of taxation, but only seeks to be relieved from an assessment made against it so far as the same is excessive, exorbitant and unjust.

Wherefore this plaintiff prays for a temporary restraining order against said defendant, to prevent him from imposing the penalty of ten per cent. upon the excess of said assessments over the taxes which have been paid by this plaintiff on the third Monday in April, 1892, as above set forth, and to prevent said defendant from levying upon the plaintiff's property by virtue of the duplicates in the hands of said defendant as aforesaid for said sums, and from taking any steps to collect the same until the further order of this court and until a hearing can be had; and plaintiff prays that upon a final hearing of this case, the assessment in excess of the valuations returned by this plaintiff, as aforesaid, made by the State board of tax commissioners on the 8th day of September, A. D. 1891, and certified by them to the auditor of state and by him to the county auditors, and upon which said taxes are computed shall be declared

to be void and of no effect because said assessment was made arbitrarily by the mere will of the taxing board, without any examination or inquiry or evidence, and because said assessment is not the honest judgment of said board as to the value of the railroad track and rolling stock upon inquiry and evidence or personal
45 examination or any knowledge or information of said board, but was fraudulently made for the purpose of increasing the burdens of this plaintiff and other railroad companies, and relieving the burdens of other citizens owning other classes of property, and for each and every of the reasons hereinbefore specifically set forth, and that the defendant hereinbefore named, and his successors in office, be perpetually enjoined from collecting the taxes extended on said assessments, as aforesaid, in excess of the valuations returned by plaintiff, or taking any steps to collect the same, and that the cloud cast upon the plaintiff's real estate by reason of said assessments, and the lien which they create, may be removed from the right of way and real estate of plaintiff, and the plaintiff's title quieted, and for all other and proper relief.

CLEVELAND, CINCINNATI, CHICAGO AND
ST. LOUIS RAILWAY COMPANY,
By E. A. PECK, *Gen'l Sup't.*

STATE OF INDIANA, }
County of Marion. }

Before the undersigned, a notary public in and for the county of Marion, this 2 day of May, A. D. 1892, personally appeared E. A. Peck, who stated upon oath that he is the general superintendent of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and, as such general superintendent, he says that the facts stated in the foregoing complaint are true to the best of his knowledge, information and belief.

[SEAL.] EVANS WOOLLEN,
Notary Public.

Attest certification on back.

JOHN R. WILSON, *Clerk.*

BAKER & DANIELS,
JOHN T. DYE,
Attorneys for Plaintiffs.

46 STATE OF INDIANA, }
Marion County. }

Personally appeared before the undersigned, notary public, E. A. Peck, general superintendent of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and states under oath that the facts stated in the foregoing amended complaint are true to the best of his knowledge and belief.

E. A. PECK,
Gen'l Sup't C., C., C. & St. L. R'y.

Signed and sworn to before me, a notary public.

EVANS WOOLLEN,
Notary Public. [SEAL.]

47 [Endorsed:] State of Indiana, county of Marion. No. 6133. C. C. C., C., C. & St. L. R'y Co., plaintiff, *vs.* Victor M. Backus, defendant. Complaint to quiet title and for injunction. Filed May 2d, 1892. Jno. R. Wilson, clerk. Baker and Daniels, John T. Dye, att'ys for pl't'ffs.

Sum's to May 16, '92.

The clerk will please issue summons hereon to the defendant, returnable to May 16th, 1892, on which day the defendant is required to appear and answer.

JNO. T. DYE,
BAKER & DANIELS,
Att'ys for Pl'ff.

May 2d, '92.

48 THE STATE OF INDIANA, } *ss:*
Marion County, }

I, John R. Wilson, clerk of the Marion circuit court, the same being a court of record and having a seal, do hereby certify the within and foregoing to be a full, true, and complete copy of the original and amended complaint in cause No. 6133 as filed in said court.

Witness my name and the seal of said court this 31st day of May, 1892.

[SEAL.] JOHN R. WILSON, *Clerk.*

49 [Endorsed:] No. 6133. Marion circuit court. C., C., C. & St. L. R'y Co., plaintiff, *vs.* Victor M. Backus, treasurer of Marion Co., Ind. Amended complaint. Filed May 28th, 1892. John R. Wilson, clerk. Jno. T. Dye, Baker & Daniels, for plaintiff.

50 "And the defendant now files an answer in general denial to the said amended complaint in the words and figures following, viz:

STATE OF INDIANA, } *ss:*
Marion County, }

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS, Treasurer, &c. } No. 6133. Circuit Court. Answer to Amended Complaint.

The defendant, Victor M. Backus, treasurer, &c., for answer to the plaintiff's amended complaint herein, denies each and every material allegation therein contained.

W. A. KETCHAM,
Att'y for Def't."

"And now the plaintiff moves the court for judgment in its favor upon the pleadings filed herein."

And afterwards, to wit, on the 27th day of June, 1892, being the 49th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come again the parties, by their respective counsel, and this cause, being at issue and coming on for hearing, is now submitted to the court for trial, finding, and judgment without the intervention of a jury; and a part of the evidence having been heard, the further investigation hereof is postponed until to-morrow morning at nine o'clock."

And afterwards, to wit, on the 28th day of June, 1892, being the 50th judicial day of the May term, 1892, of said court,
51 before the same honorable judge, the following proceedings were had herein, viz:

"Come now the parties as heretofore, and the consideration of this cause is resumed; and additional evidence having been heard, the further investigation hereof is continued until to-morrow morning at nine o'clock."

And afterwards, to wit, on the 29th day of June, 1892, being the 51st judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come again the parties, by counsel, and the trial of this cause is now resumed; another portion of the evidence having been heard, the further investigation hereof is postponed until to-morrow morning at nine o'clock."

And afterwards, to wit, on the 30th day of June, 1892, being the 52nd judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Now come the parties, by counsel, and the consideration of this cause is resumed; and additional evidence having been heard, the further trial of this cause is postponed until to-morrow morning at nine o'clock."

And afterwards, to wit, on the first day of July, 1892, being the 53rd judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come again the parties, by their respective attorneys, and the investigation of this cause is resumed; and another portion of evidence having been heard, the further consideration of this cause is now postponed until Tuesday morning, July 5th, 1892, at nine o'clock."

52 And afterwards, to wit, on the 5th day of July, 1892, being the 56th judicial day of the May term, 1892, of said court,

before the same honorable judge, the following proceedings were had herein, viz:

"Now come the parties, by counsel, and the consideration of this cause is resumed, and, the evidence having been concluded, *and* the court, not being fully informed, takes this cause under advisement."

And afterwards, to wit, on the 19th day of September, 1892, being the 13th judicial day of the September term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

STATE OF INDIANA, }
County of Marion. }

In the Marion Circuit Court.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
vs.
VICTOR M. BACKUS, Treasurer, Defendant. } No. 6133.

Entry.

"Come now the parties, plaintiff and defendant, by their attorneys, and the court, having fully considered the question as to the admissibility of the report of the "Terre Haute and Indianapolis Railroad Company" made to the auditor of state, and by him laid before the State board of tax commissioners, offered in evidence by the plaintiff, sustains the objection of the defendant to the
53 admission of such evidence and excludes such report; to which ruling of the court the plaintiff excepts.

The court also sustains the objection of the defendant to the admission in evidence of the statements of F. J. Van Vorhis, made before the board on the night of the 18th of August and offered in evidence by plaintiff; to which ruling of the court the plaintiff excepts.

The court also sustains the objection of defendant to the admission in evidence of the tables contained in the report of the proceedings of the State board of tax commissioners, pp. —, showing the assessment or values placed by said board upon other railroads than plaintiff's roads and upon roads lying wholly within the State of Indiana and not partly within and partly without the State of Indiana; to which ruling of the court the plaintiff excepts.

Thereupon the court, being sufficiently advised, does find for the defendant upon the issues joined herein upon each and every one of the specifications contained in the complaint and does adjudge and decree that the plaintiff is entitled to no relief upon the averments of its complaint and the evidence in this case, and that the plaintiff's complaint be dismissed, and that the defendant recover of the plaintiff his costs herein expended, taxed at $—; to which judgment of the court the plaintiff excepts and now files its motion for new trial herein in the following words and figures, to wit:

54 STATE OF INDIANA, }
County of Marion. }

In the Marion Circuit Court.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
vs.
VICTOR M. BACKUS, Treasurer, Defendant.

Motion and Reasons for New Trial.

The plaintiff moves the court for a new trial in this case for the following reasons:

1. Errors of law occurring at the trial and excepted to by this plaintiff as follows, to wit:

1. Issue having been joined upon the question whether the State board of tax commissioners of Indiana had adopted a rule or system of valuation of railroad track and rolling stock not at its true cash value, but according to the value of its franchises, the amount of its earnings from interstate commerce, the value of the stock issued by such company, and the amount of its bonded debt, and by and in pursuance of such rule assessed said railroad track and rolling stock of the plaintiff at a sum far higher than its true cash value and higher than other property in the State of Indiana is assessed for taxation; and issue having been joined upon the question whether said board had adopted a rule in arriving at a basis for the estimate of the value of the various railroads and parts of roads in Indiana by
55 which they considered and took into account the market value of the stocks resting upon and representing railroad property, real and personal, wholly without the State of Indiana, the market value of bonds resting upon and secured by railroads without the State of Indiana, and by which rule they also considered gross and net earnings of the roads and parts of roads without the State of Indiana, thereby discriminating against railroads partly within and partly without the State of Indiana and in favor of railroads wholly within the State of Indiana, and assessed the railroad track and rolling stock of plaintiff at a far higher sum than its true cash value and at a far higher sum than the railroad track and rolling stock of railroad companies owning railroads wholly within the State of Indiana; and issue having been joined upon the question whether said board, in making such assessment of railroad track and arbitrarily fixing a valuation upon said track at a sum more than twice its cash value, knowing that real estate in the State of Indiana was assessed at not more than eighty per cent. of its cash value; and issue having been joined upon the question whether said board fixed a valuation upon plaintiff's railroad track and rolling stock at a sum that is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroad companies a greater burden of taxation than upon other property of equal value, and the question as to whether an excessive valuation had been placed upon plaintiff's property being material under all the specifications of the complaint, the

court utterly excluded all evidence whatever as to the value of plaintiff's railroad track and rolling stock assessed by the State board of tax commissioners.

a. The court erred in refusing to permit witness H. P. Taussig, one of the experts produced by plaintiff, to testify as to the fair cash value per mile of the main track, including right of way, of the line between Templeton and the Illinois State line, in answer to Q. 31, p. 128.

56 *b.* The court erred in refusing to permit said witness to testify to the value of the Indianapolis division of said railway. Q. 36, p. 151.

c. The court erred in refusing to permit the plaintiff to prove that the main track of the Indianapolis division, 83.84 miles, was worth on the 1st day of April, 1891, $8,096 per mile. P. 153.

d. The court erred in refusing to permit the plaintiff to prove by said witness, in answer to Q. 37, that the St. Louis division, 80.47 miles, was worth $10,461 per mile.

e. The court erred in refusing to permit plaintiff to prove by said witness the value of the Chicago division, extending from Cincinnati to Lafayette, was worth, with its connections, on the 1st day of April, 1891, $7,256 per mile. Q. 38, p. 154.

f. The court erred in refusing to allow said witness to testify as to the value of the C., H. and G. railway in answer to Q. 42 and in rejecting plaintiff's offer to prove the main track of the road April 1, 1891, was worth $5,776 per mile.

g. The court erred in refusing to permit said witness, in answer to Q. 44, to testify as to the value of the V., G. and R. railway and in refusing to allow the plaintiff to prove by said witness that the value of that track was worth on the 1st day of April, 1891, $4,570 per mile.

h. The court erred in refusing to allow the plaintiff to prove by said witness the value of the side track of the C., L. and C. railway from Templeton to the Illinois State line in answer to Q. 45, p. 157, and in sustaining the objection to plaintiff's offer to prove it to be worth $2,625 per mile.

i. The court erred in sustaining the objection to Q. 46 as to the value of the second main track of the Indianapolis division of the plaintiff's railroad and in excluding the offer of plaintiff to prove that it was worth only $4,000 per mile.

57 *j.* The court erred in refusing to allow plaintiff to prove, in answer to Q. 47, p. 159, that the value of the side track of the Indianapolis division of the plaintiff's railroad was $2,525 per mile.

k. That the value of the side track of the St. Louis division of the plaintiff's railroad, Q. 48, was $2,625 per mile.

l. That the value of the side track of the Chicago division of the plaintiff's railroad, Q. 49, was $2,625 per mile.

m. The court erred in sustaining the objection to Q. 50 to said witness Taussig as to the value of the railroad track of the Chicago division, including right of way, main track, second main, and side track and improvements on right of way, taking into consideration

the termini and the condition of the roads and all considerations that would affect its value on the 1st day of April, 1891, and in refusing to permit plaintiff to prove by said witness that said value was $1,137,813.36.

n. The court erred in refusing to permit witness Joseph Ramsey, Jr., to answer question 9, to wit: "What was the cash value of the main track of the Indianapolis division of the C., C., C. and St. L. railroad in Indiana, considering it as a part of a railroad track, from Indianapolis to Cleveland, and taking into consideration all other conditions that would affect the cash value thereof on the first day of April, 1891—that is, the Indianapolis division?" and in refusing to permit plaintiff to prove by said witness that the cash value of said road was $11,000 per mile.

o. The court erred in refusing to allow said witness, Joseph Ramsey, Jr., to state the earning capacity per mile for the year 1890 and 1891 of the line owned by the C., C., C. and St. L. railroad extending from Cincinnati to Cleveland, p. 344, and in rejecting plaintiff's offer to prove that the earning capacity of the railroad from Cincinnati to Cleveland was—the Cleveland division, gross earnings, $16,400 per mile, and for the Cincinnati division $11,000 per mile.

58 *p.* The court erred in refusing to allow witness Joseph Ramsey, Jr., to answer Q. 17, as to the earning capacity of the St. Louis division of plaintiff's road during the years 1890 and 1891 and in rejecting the offer of plaintiff to prove that it was $8,000 per mile. P. 346.

q. The court erred in refusing to permit said witness, Joseph Ramsey, Jr., to testify as to the value of the terminal properties in Cincinnati, Columbus, and Cleveland, in the State of Ohio, owned by the plaintiff and embraced in the valuation represented by the stocks of said company, and in rejecting the offer of plaintiff to prove that the value of these terminals represented by these stocks was $6,000,000. P. 346.

r. The court erred in refusing to allow witness Joseph Ramsey, Jr., to answer the 19th question, p. 347, as to whether bonds of plaintiff covered the whole of its property or whether they are of a different series issued by the different roads out of which the consolidated corporation was formed and resting on different lines, and in rejecting plaintiff's offer to prove that the bonds of the plaintiff considered by the board in arriving at the basis of its estimate of valuation were issued in different series by the different companies of which it was composed, and that these bonds rested upon separate lines and not upon the whole property of the plaintiff.

s. The court erred in refusing to allow plaintiff to prove by said witness Ramsey how many of the bonds of the C., C., C. and St. L. R'y Company rested upon property outside of the State of Indiana, p. 349, and in rejecting plaintiff's offer to prove that $26,000,424 rest upon lines wholly without the State of Indiana.

t. The court erred in refusing to allow witness Ramsey to answer Q. 21 as to the per cent. of the business of the St. Louis division of

plaintiff's railroad derived from interstate transportation, p.
59 350, and in rejecting plaintiff's offer to prove that 75% of the business of said division comes from transportation between interstate points.

u. The court erred in refusing to allow witness Ramsey to answer Q. 23, and in rejecting plaintiff's offer to prove that 80 % of the gross earnings of the St. Louis division of plaintiff's railroad are derived from transportation from points without the State to points within the State or from points within to points without or from through business passing through the State from points without to points without the State.

v. And the court erred in refusing to allow Mr. Ramsey to answer Q. 24 as to the per cent. of the gross earnings of the Chicago division of plaintiff's railroad derived from interstate commerce, and in rejecting plaintiff's offer to prove that 70 % to 75 % of said earnings are derived from interstate commerce.

w. The court erred in refusing to allow said witness, Joseph Ramsey, Jr., to answer as to the length of the line from Cincinnati, O., to Cleveland, O., and in rejecting plaintiff's offer to prove that said line was 304 miles long.

2. Issue having been joined under the 4th specification of the complaint herein as to whether the State board of tax commissioners did arbitrarily and from mere will, from prejudice and caprice, without having made personal inquiry or examination as to the value of said rolling stock and railroad track or caused such examination to be made, without having called before them any person who had knowledge touching the subject or caused any witness to be examined under oath, fix the valuation of plaintiff's railroad track and rolling stock at a sum which is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroads a greater burden of taxation than upon other property of equal value, and that the valuation placed by said board upon plaintiff's railroad track and rolling stock as above set forth
60 was not the result of the honest judgment of said board, based upon their own knowledge or upon evidence or inquiry, but such valuation made by said board was willful and arbitrary and made with the fraudulent intent to increase the amount of taxes to be paid by this plaintiff in a much greater proportion than the increase of the amount of taxes to be paid by the owners of other property in the State of Indiana other than railroad property. This court utterly refused to hear evidence outside of the record made by the board and excluded evidence contained in said record tending to show that the action and conduct of said board was fraudulent, and rejected material and competent and relevant evidence tending to show that said board acted arbitrarily and willfully, without knowledge and examination of plaintiff's property, with the fraudulent intent of imposing a greater burden of taxation upon the plaintiff than upon other citizens owning property of equal value, to wit:

a. The court erred in refusing to allow Claude Matthews, one of the tax commissioners, to answer the following question: "Mr.

Matthews, did you ever make any personal inspection of the lines of the Big Four for the purpose of examining as to the amount and character and physical condition of its track?" and in refusing to allow plaintiff to prove by said Matthews that he had never made any such inspection.

b. The court refused to permit plaintiff to prove by said Matthews that he had never made any inspection of the F., F. and M. R. R.

c. Or of the C., H. & G. R. R.

d. Or of the V., G. & R. R. R.

e. The court erred in refusing to allow Matthews to answer whether any papers, books, or documents were before them with reference to the amount, character, and value of the railroad track of the lines of the plaintiff, Q. 68, p. 28, and in refusing to allow plaintiff to prove by said witness that no books, paper, or documents were before said board except Poor's Manual and the Investor's Guide.

61 *f.* The court erred in sustaining the objection to Q. 69 to said witness Matthews as to whether they had before them or used Poore's Manual for 1890, and in refusing to allow plaintiff to prove that they had that book before them.

g. The court erred in sustaining the objection to Q. 70 as to whether in assessing the C., C., C. & St. L. railroad the State board of tax commissioners had not before them Poore's Manual, 1890, pages 993, showing the lines owned and leased by the C., C., C. & St. L. Railroad Company in the States of Ohio, Indiana, and Illinois, with the termini and length of the various lines, and if they did not use the information furnished as to the termini and length of the lines in making the assessment, and in refusing to allow plaintiff to prove said facts by said witness.

h. The court erred in refusing to allow witness Matthews to testify whether at the time the said State board had under consideration the fixing of the values of the property of the plaintiff it had before it Poore's Manual for 1890, pages 994 and 995, showing the funded debt of said railroad, specifying the various mortgages upon the various lines of railroad controlled by it, as set out in Q. 71, p. 35, and in rejecting plaintiff's offer to show that such was the fact. P. 36.

i. The court erred in refusing to allow witness Matthews to testify, in answer to Q. 72, as to whether said State board did not have before them Poore's Manual, pages 994, 1890, showing that the plaintiff owned $5,000,000 of the capital stock of the C., V. and C. R'y Co. and a large amount of the capital stock of other railroad companies within and without the State of Indiana, and in rejecting plaintiff's offer to prove the amount of capital stock owned of said companies, as set forth in Poore's Manual for 1890 before said State board and used by them in making their assessment.

j. The court erred in refusing to allow said Matthews to answer Q. 73 as to whether said State board had before them Poore's Manual, page 995, showing the length of the C., V. and C.

62 R'y and that it was a railroad wholly without the State of

Indiana, having a capital stock of $5,000,000, owned by the C., C., C. and St. L. R'y Company, and in rejecting plaintiff's offer to prove the foregoing facts.

k. The court erred in refusing to allow said witness Matthews to testify in answer to Q. 74 as to whether the board did not have before it as evidence pages 994 and 995 of Poor's Manual, showing the gross earnings of the system, exclusive of the Peoria and Eastern railway and the C., V. and C. railway, for the year ending June 30, 1889, were $11,453,992.66, and operating expenses $7,594,171.74, making net earnings $3,859,820.92, and in refusing to allow plaintiff to prove the foregoing facts.

l. The court erred in refusing to allow said witness, Claude Matthews, to answer Q. 75 as to the earnings of the C., C., C. and St. L. R'y Co. for the six months ending December 31st, 1889, as showed by Poor's Manual, 994, and in rejecting plaintiff's offer to prove the amount of said earnings as shown on page 40 of the bill of ex.

m. The court erred in sustaining defendants' objection to Q. 76 to said witness, Claude Matthews, as to whether they had before them the Investors' Guide, showing the value of the stocks of the C., C., C. and St. L. R'y Co. on the first day of April, 1891, as evidence, and in rejecting plaintiff's offer to prove that they had.

n. The court erred in refusing to allow said witness, Claude Matthews, to answer Q. 77 as to whether said Investors' Guide was before said board, and what it showed the value of the stocks to be on the first day of April, 1891, and in rejecting the offer of plaintiff to prove said value to be 60 cents on the dollar.

o. The court erred in refusing to allow the witness Claude Matthews to answer Q. 80 as to whether he made any deductions from the value of the F., F. and M. R. R.

63 *p.* The court erred in refusing to allow said witness, Claude Matthews, to answer Q. 82, as follows: "In the assessment of the C., L. and C. R'y, extending from Templeton, Indiana, to the Illinois State line, did you consider the market value of any stocks, and, if so, of what stocks did you consider the market value?" and in rejecting offer of plaintiff to prove by said witness that in assessing said line they considered the market value of stocks and bonds of the C., C., C. and St. L. R'y Co., a different corporation, and representing to the extent of millions of dollars property wholly without the State of Indiana.

q. The court erred in refusing to allow witness Matthews to answer Q. 83, as to whether they considered the market value of stocks and bonds and what stocks and bonds in the assessment of the F., F. and M. R. R., and in rejecting offer of plaintiff to prove that they did.

r. The court erred in refusing to allow the same witness to answer Q. 84 making the same inquiry as to the V., G. and R. R. R.

s. Also as to the C., H. and G. R. R.

t. The court erred in refusing to allow witness Matthews to answer Q. 86, as follows: "In the assessment which you placed upon lines owning roads extending out of the State of Indiana into other States did the board consider the value of the stocks and bonds and

the gross and net earnings of such roads?" and in rejecting plaintiff's offer to prove the facts set forth above.

u. The court erred in refusing to allow witness Matthews to answer Q. 87, whether in making the assessment of the St. Louis division, as compared with the T. H. and I. R. R., they considered the gross earnings of the C., C., C. and St. L. R'y Co., including earnings derived from carrying freight and passengers, as a common carrier in interstate commerce, and in refusing to allow plaintiff to prove by said witness that they valued the St. Louis division of the C., C., C. and St. L., 72 miles, at $27,900 per mile upon the main track, $6,000 a mile higher than the T. H. and I. R'y, and that in making such valuation he considered and included and embraced values derived from gross earnings resulting from interstate commerce and earned in carrying on interstate commerce from and through the State of Indiana.

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v. The court erred in refusing to allow said witness, Claude Matthews, to testify in answer to Q. 88: "In making the assessment of railroads in the State of Indiana, in arriving at the basis for the estimate of values, when said roads were operated by or leased to or parts of a consolidated road or system of roads extending into other States, existing partly in the State of Indiana and partly in other States, whether you considered the market value of stocks and bonds of the consolidated road or of the road resting upon the entire property of such roads in the different States, whereas in assessing roads wholly within the State of Indiana you considered stocks and bonds and earnings resting upon property and earned by property wholly within Indiana?" and in rejecting the offer of plaintiff to prove that such was the case.

w. The court erred in refusing to allow said witness to answer Q. 89: "You say you made liberal allowances for all proper deductions. Did you make these allowances from a gross sum in the case of the C., C., C. and St. L. property and leased and operated lines operated by it, considering the market value of the stocks and bonds of the whole system and the gross and net earnings of the whole system, or did you make the deductions from the separate valuations of the separate lines?" and in rejecting the offer of plaintiff to prove the facts stated in the question.

x. The court erred in refusing to permit the witness Claude Matthews to answer Q. 90: "Did you fix the value upon the St. Louis division of the C., C., C. and St. L. as returned to the auditor of state separately or did you value the road as a part of the C., C., C. and St. L. system in Ohio and Indiana; and did you, having reached a unit of value by considering the whole system, distribute that unit of value according to mileage over the operated and leased lines and parts of road in Indiana of the plaintiff?" and in rejecting the offer of plaintiff to prove that the board did not fix the value separately, but that the fixed the value as a unit upon the entire property of the C., C., C. and St. L. and then arbitrarily distributed such value upon the St. Louis division and other divisions of the plaintiff's road in proportion to mileage.

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y. The court erred in not allowing witness Matthews to answer Q. 97: "I will ask you if the board of equalization, in equalizing the value of real estate in Indiana, did not fix a value at which the real estate of the various counties was equalized not to exceed 70 % on the dollar?" and in rejecting the offer of plaintiff to prove such to be true.

z. The court erred in refusing to allow plaintiff to offer in evidence the statement of F. J. Van Vorhis made to the board on the evening of August 18, 1891.

a''. The court erred in sustaining the objection to the testimony of Colonel Walker, Q. 3, p. 89, as to what members of the board were present when Assessor Wolf stated that the assessment of real estate in Indianapolis was not more than 80 % of its cash value, and when Commissioner Walker, after such statement, said that Indianapolis would pay 10 % to 15 % more taxes than any other city in the State.

b''. The court erred in refusing to allow Col. Walker to answer Q. 4, as to whether any member of the board made any protest that the statement of Wolf and Walker was not correct at the time or at any subsequent time before the adjournment of the board.

c''. The court erred in excluding the report of the Terre Haute and Indianapolis Railroad Company made by said company to the State board, and sustaining the objection to such evidence, pp. 168, 169.

66

d''. The court erred in refusing to allow plaintiff to offer in evidence the opinion of the attorney general of Indiana from the proceedings of the State board of tax commissioners on August 25, 1891, at 2.00 p. m., as shown on page 36 of said record of the proceedings, p. 236.

e''. The court erred in refusing to allow plaintiff to offer the proceedings of the board of Friday, the 28th of August, on pp. 55, 56, and 57, with reference to the equalization of real estate in the counties of the State.

f''. The court erred in refusing to allow plaintiff to show the assessment of the various roads wholly within the State of Indiana, and not being partly within and partly without the State of Indiana, p. 244.

g''. The court erred in refusing to allow J. O. Henderson, one of the commissioners, to answer Q. 4 as to whether the board had before them, when considering the assessment of the property of the plaintiff, the record of the assessment of the same properties made by the State board of equalization for the year 1890, pp. 297, 321.

h''. The court erred in refusing to allow witness Henderson to answer as to whether any notice of any kind was given to the Big Four, the plaintiff, or any information of any kind after the 8th of September of the amount of the assessment before the adjournment of the board on the 11th day of September.

i''. The court erred in refusing to allow plaintiff to offer in evidence the opinion of the attorney general of Indiana July 13th, 1891, p. 324.

j''. The court erred in refusing to allow plaintiff to ask Commis-

sioner Matthews what he meant by "franchise" in answer to Q. 97, when he said that the board did not add anything to the lines of road by reason of the fact that it had a franchise.

67 *k''*. The court erred in refusing to allow Matthews to answer the question of plaintiff, "What was the average value of farm lands in the State of Indiana with reference to the amount at which they were equalized by the board in the year 1891"?

II. The finding, decision, and judgment of the court is not supported by and is contrary to the evidence.

III. The finding, decision, and judgment of the court is contrary to law in this, to wit:

1. The court decides that the act of March 6th, 1891, of the legislature of Indiana, with reference to taxation, providing protection to all persons against mistakes and errors of law and fact and irregularities and inequalities in original assessments of the value of property for taxation, by giving them the right to file complaints before proper tribunals and have a hearing after the assessment has been made to correct such errors, mistakes of law and fact, inequalities and irregularities, except companies owning and operating railroads, does not deprive railroad companies of the protection against mistakes of law and fact and inequalities and irregularities in the making of original assessments of their property denominated railroad track and rolling stock granted to all other persons.

2. The court holds that a general act providing for the assessment of all property for taxation according to value, which grants protection to all classes of persons and property, except one, against mistakes, errors of law and fact, and inequalities in original assessments, by giving them the right to have a hearing as to the correctness of such assessment after they are made before proper tribunals, and confers no protection whatever as to such excepted class for mistakes, errors, and inequalities in original assessments, grants the equal protection of the laws to such excepted class against errors, mistakes, and inequalities in original assessments.

68 3. The court decides that a general act, providing for the assessment of all property for purposes of taxation according to value, which grants to some citizens the right to correct errors and mistakes in the assessment of their property and denies this right to other citizens, does not grant privileges to some citizens which do not equally belong to all citizens, in contravention of the constitution of Indiana, art. 1, sec. 23.

4. The court decides that an act, providing for the assessment of property for purposes of taxation, which confers upon the party making such assessment the right to obtain information whence and where it will, without notice to or knowledge of the parties interested and to be affected thereby, without the witnesses being sworn, and without the opportunity to cross-examine or to explain or refute or rebut their testimony, and without any right or opportunity in any proceeding or any tribunal to be heard concerning the correctness of the assessment or whether the amount charged against him or his property was ascertained and apportioned in good faith and in the manner provided by law, is not in contravention of the con-

stitution and does not lack the essential elements of due process of law.

IV. The finding, decision, and judgment of the court is contrary to law.

Wherefore the plaintiff prays for a new trial of this case.

JOHN T. DYE,
BAKER AND DANIELS,
For Plaintiff, C., C., C. & St. L. R'y Co.

69 Which motion for a new trial is taken under consideration, and the court, being fully advised in the premises, does overrule plaintiff's motion for a new trial; to which ruling of the court the plaintiff now and here excepts and asks time to file a bill of exceptions, and prays an appeal to the supreme court of Indiana, and thereupon the court grants the plaintiff sixty days from this date in which to prepare and file its bill of exceptions and grants an appeal to the supreme court of Indiana.

EDGAR A. BROWN, *Judge.*

And afterwards, to wit, on the 18th day of October, 1892, being the — judicial day of the October term, 1892, of said court, before the same honorable judge, the further proceedings were had herein, viz:

"Comes now the plaintiff, by counsel, and tenders to the court its bill of exceptions herein, and the court, having examined the same, now signs and seals the said bill of exceptions, orders it to be filed and made a part of the record herein."

Said bill of exceptions is in the words and figures following:

70–74 MARION COUNTY, } *State of Indiana,* }

In the Marion Circuit Court for the May Term, 1892. Hon. Edgar A. Brown, Judge.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS R'Y CO. *vs.* VICTOR M. BACKUS, Treasurer. } No. 6133.

Bill of Exceptions.

Appearances.

For plaintiff: Hon. John T. Dye; Messrs. Baker & Daniels.

For defendant: Hon. A. G. Smith, attorney general; Solomon Claypool, Esq.; Hon. John W. Kern, William A. Ketcham, Esq.; Albert J. Beveridge, Esq.

W. S. Garber, official reporter, room 51 court-house, Indianapolis, Indiana.

(Here follows index omitted in printing. See general index.—Clerk Sup. C't U. S.)

75 MARION COUNTY, } *State of Indiana.* }

In the Marion Circuit Court for the May Term, 1892. Hon. Edgar A. Brown, Judge.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS R'Y Co. *vs.* VICTOR M. BACKUS, Treasurer. } No. 6133.

Bill of Exceptions.

Be it remembered that on Monday, the 27th day of June, 1892, and continuing thereafter on Tuesday, Wednesday, Thursday, Friday, and Tuesday, June 28th, 29th, 30th, July 1st and 5th, the same being the — judicial days of the May term of said Marion circuit court, the following proceedings were had in the above-entitled cause before the Hon. Edgar A. Brown, sole judge of said Marion civil circuit court, to wit:

The parties come and the cause, being at issue, is now by agreement submitted to the court for hearing and adjudication without the intervention of a jury, and the plaintiff, to maintain the issues on its behalf, introduced the evidence set forth in the official report of the evidence made by William S. Garber, the official stenographer of said court for said cause, as the same is set out in said official report, and upon said trial the court made the rulings recorded in said report, and the plaintiff reserved the exceptions to the
76 rulings of the court upon such trial as the same are set out in said report; which said evidence so introduced and rulings by the court and exceptions thereto by said plaintiff and official report thereof are in the words and figures following—that is to say:

Mr. JACOB P. DUNN was the first witness called,— having been sworn according to law, testified as follows:

Examination-in-chief.

Questions by Mr. DYE:

1 Q. Your name is Jacob P. Dunn?
A. Yes, sir.
2 Q. You are a resident of the city of Indianapolis?
A. Yes, sir.
3 Q. Born and raised here?
A. No, sir.
4 Q. You have been living here for a good while?
A. Yes, sir.
5 Q. You have been making some study of the science of taxation of late, have you not?
A. Yes, sir.
6 Q. And you were engaged in that study during the year 1891, were you not?

A. Quite largely; yes, sir.

7 Q. You are the author of the book or pamphlet called "The New Tax Law of Indiana" and the "Science of Taxation," I believe?

A. Yes, sir.

8 Q. This book consists of statements that were first printed in the Indianapolis Sentinel and then printed in this volume?

A. Some of it.

77 9 Q. I find in this book articles headed "terms of railroad property," beginning on page fourteen and extending to the middle of page nineteen. Can you tell me whether that was printed in the newspaper, the Sentinel, before or after the State board made assessments of the railroad property in Indiana?

Counsel for defendant objects to the question for the reason it is immaterial as to whether the articles were printed in the newspaper either before or after the meeting of the State board; whether it was published before or after the tax board assessed the railroad property. We object further because it is incompetent as to whether certain articles were published in certain newspapers by a certain man.

The court sustained the objection.

To which ruling counsel for plaintiff at the time excepted and offered to prove by the witness that article No. 3 in the book entitled The Railroad New Tax Law of Indiana and the Science of Taxation, from page 14 to the middle of page 19, was published in the Indianapolis Sentinel during the session of the State board and before the assessment of railroad property was made in the year 1891.

10 Q. You may state if during the time of the consideration of the assessment of railroad property was being had by the State board of taxation if you were before the board.

A. No, sir; I was not.

11 Q. Did you have any conversation with the board or with any members of the board upon the subject?

A. I had some talk with some of the members.

12 Q. To what members did you talk?

78 A. I think particularly with Mr. Matthews and Mr. Henderson and Mr. Walker.

13 Q. Were those conversations that you had with Mr. Matthews, Mr. Henderson, and Mr. Walker had during the time that the board was in session? I mean during the forty days' term.

A. Yes, sir; I talked to them during that time; I don't know how often.

14 Q. Did you submit to them any paper with reference to the manner in which the railroad property should be assessed, or any figures or any computation?

A. I prepared some for Mr. Matthews.

15 Q. Have you those papers with you?

A. They are here in the court-room, I believe.

16 Q. (Hands paper to witness.) Are those the figures of which you speak?

A. Yes, sir.

17 Q. To whom did you submit those figures?

A. To Mr. Matthews.

18 Q. Did you present them to any other member of the board besides Mr. Matthews?

A. No, sir.

19 Q. Did Mr. Matthews take them from you and have them in his custody?

A. He took them from me. I don't know whether they were in his custody or not.

20 Q. When were they returned to you?

A. I don't believe they were returned at all until to-day.

21 Q. In whose custody have they been during that time?

A. I don't know; I got them from Mr. Matthews.

22 Q. This morning?

A. Yes, sir.

23 Q. Did you have any talk with any members of the
79 State board besides Mr. Matthews about those figures or about the method of taxing the railroad company?

A. Yes, sir; I think so.

24 Q. With whom?

A. With Mr. Henderson and Mr. Walker.

25 Q. With Mr. Henderson and Mr. Walker?

A. Yes, sir.

26 Q. Do you know of your own knowledge whether those figures were considered by or presented to Mr. Henderson or Mr. Walker?

A. No, sir.

27 Q. Did you have any conversation with them about those figures?

Mr. KERN: We object to this question for the reason we are dealing with the State board of tax assessors, a board that is formed by the State, a board that is required to keep a record by the terms of the statute, and a board which must speak by its record. It cannot be assailed in that way. To prove outside conversations is improper. It is not the proper method of trying this case. It is incompetent. The members of the State board are not parties to this suit and it would be hearsay testimony.

Mr. DYE: I will change my question a little.

28 Q. Did you have any conversations with them about those figures during the term of the board? While they were assessing the railroad property about these figures and plans of settlement which was submitted to them?

Counsel for defendants objected to the question upon the ground and for the reasons previously stated.

Mr. DYE: I think I have the right to every act, every fact, and every statement here.

80 The COURT: I think it is incompetent. I will sustain the objection.

To which ruling counsel for plaintiff at the time excepted and offered to prove by this witness, Mr. Dunn, that during the term of the session of the State taxing board, and while they were engaged in considering the matter of assessments of railroads, and particularly the road of the plaintiff, and before such assessment had been made that he submitted to Claude Matthews the plans of the assessment, and that he spoke to J. O. Henderson, one of the members of the board, and conversed with him about the plan of assessment which was submitted by him to Mr. Matthews, and he also conversed with Mr. I. N. Walker with reference to the paper and figures and plans and assessments which he had submitted to Mr. Matthews; and I also offer to follow this proof up by other witnesses that these figures submitted to Mr. Matthews with reference to the method and the amounts of which the railroads in the State of Indiana were assessed were before the board and were considered by the board in making their assessments.

The court refused the offer; to which ruling counsel for plaintiff at the time excepted.

Witness excused for the present.

81 Mr. CLAUDE MATTHEWS was the next witness called, —, after being duly sworn, according to law, testified as follows:

Examination-in-chief.

Questions by Mr. DYE:

1 Q. Mr. Matthews, will you look at these papers and return them to me after you have inspected them sufficiently to identify them? (Hands papers to witness.) Have you looked at those papers?

A. Yes, sir.

2 Q. You are a member of the State board of tax commissioners?

A. Yes, sir.

3 Q. Is this the paper that was handed to you during the consideration of the three C.'s and St. L. railroad property and property operated by the three C.'s and St. L. Railroad Company?

A. Yes, sir.

4 Q. When was it handed to you, Mr. Matthews?

A. I cannot state to you specially the date. It was some time during August.

5 Q. Of 1891?

A. Yes, sir; it was while the State board was in session.

6 Q. And before you made the assessments?

A. Yes, sir; it was handed to me by Mr. Jacob P. Dunn.

7 Q. Was it after the railroad had been heard? Was it after the C., C., C. & St. L. had been heard? After I was there or before?

A. I don't remember, at the time we were considering it, whether it was before that or not.

8 Q. It was at the time you were considering the property of the C., C., C. & St. L. Company?

A. Yes, sir.

9 Q. Was that paper considered by you?

Counsel for defendant objected to that question as being improper.

82 10 Q. Was this paper before the board?

A. It was not.

11 Q. Was any paper based upon this or any memorandum made before you presented it to the board?

A. No, sir; no memorandum based upon it was presented to the board.

12 Q. You did present a paper to the board, didn't you?

A. Yes, sir; I did.

13 Q. What did you do with that paper?

A. It was in the form that we used in the board; it was a rough statement of the matters that the whole board considered, and I don't know what became of it. We attached no importance to it after it was copied, and I suppose it was destroyed.

14 Q. I will ask you if the figures which you presented to the board contained the following statements for the basis upon which you assessed the value of the Big Four property—if the basis of the figures which you presented to the board and upon which you assessed the valuation that you sat down upon the Big Four property was not the cost of the construction and equipment of the entire road was $52,402,961, earning capacity of 1,298 miles; bonds, $34,070,580; stocks, $38,712,680, and if upon the statements which you presented to the board the preferred stock was not rated at 95 % and the common stock at 50 %, and if you did not figure upon it and make it that the value of the Big Four line was $57,920,580?

Counsel for defendant objects to the question. The witness ought not to be required to answer the question, as uncertain a question as it is.

The COURT: That is not proper.

Mr. DYE: I will change the form of the question. I will
83 withdraw the question.

15 Q. Mr. Matthews, you did present a paper to the State board?

A. Yes, sir; I presented quite a number of papers to the board.

16 Q. For their consideration in making those assessments?

A. Yes, sir.

17 Q. You presented figures to the board?

A. Yes, sir; I did.

18 Q. As a basis of the assessments?

A. The assessment itself.

19 Q. You presented the assessment itself?

A. Yes, sir; figures covering the assessments.

20 Q. And covering the basis of the assessments?

A. No, sir; covering the assessment itself.

21 Q. You presented figures to the board which contained assessments of the value of the stock of the Big Four road, didn't you?

Mr. KETCHAM: We object to this evidence. To take it in piecemeal in this way might leave an unfair impression upon the court as to the substance of what he said to the board. It is not the best way of getting at this.

The COURT: I don't think this is proper.

Mr. DYE: I will get at it in another way.

22 Q. I will ask you if you presented to the board any paper containing the valuation or the costs of the constructions, the amount of the bonds and stocks of the C., C., C. & St. L. railroad.

Mr. KERN: We object to this question for the reason they have no right to anything that took place before that board, in so far as it relates to the process in their report. I think that cannot be done; that the process by which the State board of assessors arrives at a result cannot be inquired into. It is improper. They cannot prove anything that happened before the board. It
84 does not tend to prove any of the averments of the complaint. The record is the best evidence, and they are bound by the record.

Whereupon, the hour of five o'clock having arrived, the further hearing of this testimony was adjourned until nine o'clock tomorrow morning.

TUESDAY MORNING, 9 O'CLOCK, *June 28th*, 1892.

The court met pursuant to adjournment.

Present: The same as before.

The taking of testimony was resumed as follows:

The COURT: I will overrule the objection. You may ask the question.

23 Q. Mr. Matthews, answer the question. I will ask you if you presented to the board any paper containing the valuation or the costs of the construction, the amount of the bonds and stocks of the C., C., C. & St. L. railroad.

A. I presented, in connection with others, some papers to the board, but not containing any figures showing the amount of the bonds or stocks or constructions.

24 Q. What is that?

A. In connection with others I presented some figures to the board, but not containing any figures upon the indebtedness or bonds or stocks alone.

25 Q. Do you or not mean that you presented a paper which contained figures showing the amount of the bonds, stocks, and indebtedness of the C., C., C. & St. L. road, although it might have contained other things?

A. I do not.

85 26 Q. You did not present to the board anything that contained any figures of the amount of the bonds or indebtedness of the C., C., C. & St. L. road?

A. I presented no paper that contained the amount of the bonds or indebtedness of the C., C., C. & St. L. railroad.

27 Q. Did you present to the board any figures which contained the amount of the stocks of the C., C., C. & St. L. road?

A. No, sir.

28 Q. Did you present any figures that contained the amount of costs of the construction of the C., C., C. & St. L. road?

A. No, sir; I did not.

29 Q. In question 67 I asked you, "When we attempted to take your deposition you were asked what figures and memorandum upon which this assessment was based are in your possession; if not, in whose possession they are?" and did you not answer, "I have some of the preliminary figures upon which the assessment was based"?

Counsel for defendant objects to the question for the reason it is not proper and it is an impeachment.

The COURT: That is an impeaching question.

29½ Q. I will ask you if on the 11th day of May, 1892, the date at which you were sworn and examined and we attempted to take your deposition in your office, in this city, preliminary, what figures upon which the assessment of the Big Four property was assessed were in your possession.

A. Part of those figures were.

30 Q. Where now are the part of those figures that were in your possession on that day referred to in the last preceding question?

A. They are here; they are still in my possession.

31 Q. They are still in your possession?

A. Yes, sir.

32 Q. Are they the same figures that were in the posses-
86 sion of Mr. Dunn here yesterday?

A. They are.

33 Q. Did you present any paper or any memorandum of any sort containing information or data with reference to the assessments of this property to the State board?

Counsel for defendant objected to the question for the same reasons as before given.

34 Q. Are these five sheets marked by the reporter Exhibit "A" for identification and marked by her the figures which you testified were in your possession in the preceding question on the 11th day of May? (Papers handed to witness.)

A. Yes, sir.

35 Q. Do I or not understand you to say in the previous question that the assessment of the Big Four road was made upon these figures?

Counsel for defendant objected to the question for the reason it was entirely immaterial.

Mr. DYE: I will change that question.

36 Q. Were there any statements or memoranda handed by you to the board in relation to this assessment, presented by you to the State board, of this company?

A. Yes, sir.

37 Q. There were?

A. I presented some papers to the board.

38 Q. These five papers that have been marked as Exhibits "A," were they presented by you to the board?

A. They were not.

39 Q. Were they before the board at all?

A. They were not.

40 Q. Were they submitted to any member of the board except yourself?

87 Counsel for defendant objected to the question for the reason that the paper was never before the board and never considered by them.

The court sustained the objection; to which rulings of the court counsel for plaintiff at the time excepted and offered to prove by this witness that the tables 1, 2, 3, 4, and 5, marked Exhibits "A" and signed by the stenographer for identification, were submitted to J. O. Henderson, I. N. Walker, Josiah Gwin, and Alvin P. Hovey, members of the State board of equalization, during the time they were considering the matter of the assessment of railroads in the State of Indiana and while they were engaged in the consideration of railroad property—the railroad property of the plaintiff in this case.

The court refused the offer; to which ruling counsel for plaintiff at the time excepted.

41 Q. Where are the papers that I understand you to say that you presented to the board?

A. I don't know.

42 Q. Have you seen them since that time?

A. I have not since the adjournment of the board.

43 Q. Mr. Matthews, did the papers that you presented to the board contain any computation of any sort or was it simply statements of the value that should be placed per mile on the main track, the second main track, the side track, and the rolling stock?

Counsel for defendant objected to the question for the same reasons as before given.

44 Q. Mr. Matthews, will you look at the paper that I now hand you (hands paper to witness) and say if those are the papers which you delivered to the State board?

A. They are not.

45 Q. Are not those papers in your handwriting?

88 A. No, sir; not all of them.

46 Q. Are any of them?
A. Some of them are.
47 Q. Turn to the C., C., C. & St. L. paper. Is that in your handwriting?
A. It is not.
48 Q. Do you know whose handwriting that is?
A. No, sir; I do not positively.
49 Q. Here are the three papers that relate to the C., C., C. & St. L. road.
A. They are not in my handwriting.
50 Q. Were those papers written by any clerk in your office?
A. No, sir.
51 Q. They are not the papers which you delivered to the board?
A. No, sir.
52 Q. We are trying to get at the papers which you delivered to the board.
A. No, sir; these are not the papers.
53 Q. Were the papers which you delivered to the board in your handwriting?
A. Only partially.
54 Q. In whose handwriting were the papers which you presented to the board besides your own, if they were not in your handwriting?
A. Partly in Mr. Henderson's handwriting and, I think, partly in Col. Walker's, but I will not be sure.
55 Q. When were they presented to the board?
A. I cannot remember the date.
56 Q. How long was it before the 8th day of September when the assessments were finally made?
A. I cannot tell you that. We had those things in consideration for several days before the board, but I don't remember just
89 how long before the 8th of September that I presented them or that we presented them.
57 Q. They were presented during the time you were considering this matter of the assessment of the Big Four road and other roads?
A. Yes, sir.
58 Q. Do you know where they are?
A. I do not; no, sir.
59 Q. What books did you have before the board during the time of the consideration of the assessment of the Big Four property and while you were making the valuation of the property which you embraced in and returned to the auditor of your assessments?

Counsel for defendant objected to the question for the reason it is an assumption. It is immaterial what books were before the board.

The COURT: That is assuming.
Mr. DYE: I will alter that question.

60 Q. Mr. Matthews, did you ever make any personal inspection

of the line of the Big Four for the purpose of examining into the amount and character and physical condition of its track?

Counsel for defendant objected to the question for the same reasons as before given.

The court sustained the objection; to which ruling of the court counsel for plaintiff at the time excepted, and offered to prove by this witness——

The hour of 12 o'clock having arrived, the further hearing of this testimony was adjourned till 2.00.

90 2 O'CLOCK P. M.

The court met pursuant to adjournment.

Present: The same as before recess.

The examination of the witness CLAUDE MATTHEWS was resumed as follows;

Mrs. Hardy, the official reporter, read the question pending at the noon adjournment as follows:

"Questions. Mr. Matthews, did you ever make any personal inspection of any of the lines of the Big Four for the purpose of examining into the amount and character and physical condition of its tracks?"

The COURT: To this question I will sustain the defendant's objection.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: Now, may the court please, I offer to prove by this witness that he never made any examination or inspection of any of the lines of the plaintiff, The Three C.'s and St. L. Railway Company, owned or operated by it in Indiana, with a view to ascertaining the physical condition of its railroad tracks.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Q. Mr. Matthews, I will ask you if you ever at any time for any purpose have gone over the road from Fairland to Martinsville, the Fairland, Franklin and Martinsville railroad.

To this question the defendant objected on the grounds
91 and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove by this witness, may the court please, that he had never been over the road from Fairland to Martinsville, known as the Fairland, Franklin & Martinsville railway, and had no knowledge whatever of the physical condition or character of said railroad from any inspection or examination thereof.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Q. I will ask you if you ever had been over the Columbus, Hope & Greensburg railroad from Greensburg, Indiana, to Columbus, Indiana.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: May the court please, I now offer to prove by this witness, who was a member of the State board of taxation, that he had never been over or seen any portion of the railroad track of the Columbus, Hope & Greensburg railroad, and that he had no personal knowledge whatever as to its physical condition or value.

Q. I will now ask you the same question with reference to the Vernon, Greensburg & Rushville railroad. Had you ever been over that road for any purpose or did you have any personal knowledge as to the condition of its railroad and the value of its railroad track?

92 To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We now offer to prove by this witness that at no time had he ever been over the Vernon, Greensburg & Rushville railroad, extending from Rushville, Indiana, to Vernon, Indiana, and that he had no knowledge whatever of the condition or value of its railroad track.

Q. Was there any evidence before the board other than that contained in the returns of the three C.'s and St. L. Railroad Company, and in the returns of the three C.'s & St. L. Railway Company and in the returns of the Fairland, Franklin & Martinsville Railroad Company, and of the Vernon, Greensburg & Rushville Railroad Company, and of the Columbus, Hope & Greensburg Railroad Company, and of the Cincinnati & Southern Ohio River Railroad Company as to the character, condition, value, cost of construction of the railroad track of any of the lines of the three C.'s & St. L. or of any of the lines of the other companies that I have named?

Mr. KERN: We object to that, because it is indefinite as to the word "evidence." The question does not disclose whether it was sworn evidence, whether evidence in the sense of testimony, or whether he means information—whether the board had information. I think if Mr. Dye would define what he means there by the word evidence that we would not object to it.

The ATT'Y GENERAL: The witness is liable to be misled.

Mr. DYE: I do not think it is a misleading question. The word evidence is a plain word and there is no danger of the wit-
93 ness being misled. I stand by the question as asked.

The COURT: It has a technical meaning and a general

meaning. It may mean evidence in the general term; any information. If that is the understanding——

Mr. DYE: There is no understanding about it, may the court please, except the question. I make no agreement as to the meaning of plain English.

The ATT'Y GENERAL: If Mr. Dye is not willing to frame his question so that the witness, who is not a lawyer, can understand it, I will object to it because it is leading.

Mr. DYE: It is a preliminary question, may the court please. It strikes me that the objection that I am suggesting answers to Mr. Matthews or that there is any danger of my leading him is not well taken.

The COURT: Whether you are in any danger of leading the witness or not is not the question before the court. The question is whether or not the question is leading.

Mr. DYE: And your honor will have to decide that question.

(The question was read.)

Mr. DYE: I will modify that question slightly so as to make it read, "Was there or not?" The reporter will please put it, "Was there or not any evidence before the board other than that contained in the returns of the three C.'s & St. L. railroad?" &c.

The COURT: The objection is overruled now.

A. Well, if I place my own construction upon the word "evidence," I will say that there was.

Q. Was there any witness examined under oath or otherwise by the State board of tax commissioners as to the character, condition, or value of the railroad track of any of the lines above named?

94 Mr. SMITH: That is the same misleading question, may the court please, that we have been having; putting in the word "otherwise." I don't know how even an expert might get around a question like that and answer it.

The COURT: I think that question is all right.

A. No; I don't believe there was.

Q. Well, you know whether there was or not, do you not, Mr. Matthews?

A. As applying to this road specifically, only embracing it in a general way, there probably was not mentioned this road, singling it out from the others.

Q. The roads named in the question, the three C.'s & St. L. and the other roads I have named there. You say probably there was not. What I want to know is if you do not know certainly whether there was or not.

A. Well, I say specifically upon this road there was not.

Q. Were any books or papers or documents produced before the board of tax commissioners with reference to the character, condition, or value of the railroad track of the lines that I have named?

The ATT'Y GENERAL: We object to that question. It is the same old question. The court ruled that out this morning.

Mr. DYE: I don't know about that.

Mr. KETCHAM: It is the same old question, and we are making the same old objection.

95 Mr. DYE: I think, may the court please, we have a right to know what evidence was before this board. He says there was other evidence, and we have a right, of course, to know what that was. It cannot be that the taxing board is entrusted with arbitrary and uncontrolled power to lay burdens upon the property of citizens, and that there is no power to find out what was done before the board or what was before the board. You can prove by the judge of a court what was before him or by a jury what was before him or by an arbitrator what was considered or what was not considered. There is no question as to the competency of the witness. It is simply the question as to whether we can prove what took place before that board. The statute gives the board the right to send for persons and papers. The question is whether they sent for any and had any before them.

The COURT: In consideration of the fact that the proceedings of the board have been introduced in evidence, and that they might otherwise have to go into every particular matter that was brought before the board, I think this objection ought to be sustained.

The objection is sustained; to which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that no books or papers or documents, except Poor's Manual and the Investors' Guide, were produced before said board or considered by said board in the making of the assessment.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

96 Q. Mr. Matthews, I will ask you if, while you were considering the assessment of the three C.'s & St. L. railroad, you had before you and used Poore's Manual of Railroads for the year 1890 for data.

Mr. KETCHAM: We object to that for the same reason.

The COURT: It is the same question, it seems to me, and presents the same question. I will sustain the objection.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that when they were considering the assessment of the three C.'s & St. L. railroad that they had before them Poore's Manual of Railroads for the year 1890, and that they used that for data upon which the assessment was based.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

2 Q. I will ask you, Mr. Matthews, if, when you were assessing the

three C.'s & St. L. lines and the other lines named in this examination before, you did not have before you Poore's Manual of Railroads for the year 1890, page 993, showing the lines owned and leased by the three C.'s & St. L. railway in the States of Ohio, Indiana, and Illinois, with the termini and length of these various lines, and if you didn't use the information furnished as to the length of the lines and the termini of the lines in making your assessment.

Mr. KETCHAM: The question is objected to.

97 Whereupon, the hour of 4.30 o'clock having arrived, the court adjourned until to-morrow, Wednesday, June 29th, 1892, at 9 o'clock a. m.

WEDNESDAY, *June 29th*, 1892—9 o'clock a. m.

The court met pursuant to adjournment.
Present: The same as on yesterday.

The examination of the witness CLAUDE MATTHEWS was resumed as follows:

The court sustained the defendant's objection to the question pending at the time of adjournment last evening; to which ruling the plaintiff at the time excepted.

Mr. DYE: May the court please, we now offer to prove by the witness that at the time they were fixing the valuation of the property of the Cleveland, Cincinnati, Chicago & St. Louis railway, the Cincinnati, La Fayette & Chicago railway, the Peoria & Eastern railway, the Fairland, Franklin & Martinsville railway, the Columbus, Hope & Greensburg railway, the Cincinnati, Southern & Ohio River railway, and the White Water railway that the board had before it Poore's Manual of Railroads for 1890, page 993, showing the lines owned by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to wit:

From Cleveland, Ohio, to Columbus, Ohio, 138 miles.
From Delaware, Ohio, to Springfield, Ohio, 50 miles.
From Gallion, O., to Indianapolis, Ind., 203.15 miles.
From Indianapolis, Ind., to Terre Haute, Ind., 72 miles.

98 And the lines leased by it, to wit:

The St. Louis, Alton & Terre Haute railroad, from East St. Louis to Terre Haute, Indiana, 189.20 miles.

The Cincinnati, La Fayette & Chicago railway, from La Fayette, Indiana, to Kankakee, Ill., 75.18 miles.

The Harrison branch, from Valley Junction, Ohio, to Harrison, Ohio, 7.83 miles.

The Cincinnati & Southern Ohio River railroad, from Lawrenceburg, Indiana, to Aurora, Indiana, 3.69 miles.

The Fairland, Franklin & Martinsville railroad, from Fairland, Indiana, to Martinsville, Indiana, 38.23 miles.

The Vernon, Greensburg & Rushville road, from North Vernon, Indiana, to Rushville, Indiana, 44.54 miles.

The Columbus, Hope & Greensburg railroad, from Columbus, Indiana, to Greensburg, Indiana, 24.28 miles.

The Cairo, Vincennes & Chicago railway, from Cairo, Illinois, to Danville, Illinois, 258 miles.

The Peoria & Eastern, from Pekin, Illinois, to Indianapolis, Indiana, 202 miles.

Total of 1,649.83 miles.

And that this was the only evidence which the board had before it of the miles of lines owned and leased by the plaintiff and of the States in which such lines were located, and was the only evidence considered by them upon the subject of the mileage and location of the lines of road owned by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

99 Q. Mr. Matthews, at the time the board had under consideration the fixing of the values of the property of the plaintiff in this case in the State of Indiana did not the board have before it Poore's Manual for 1890, page 994 and also page 995, showing the funded debt of said railroad, specifying the various mortgages upon the various lines of railroad controlled by it as follows:

First mortgage, C. & I. R. R., 7 %, $295,000.
Second mortgage, C. & I. R. R., $712,000.
Funded coupons, I., C. & C., $22,750.
Mortgage, I., C. & L. railroad, $391,000.
First mortgage, C., I., St. L. & C. railroad, 6 %, $768,000.
Mortgage, I. & V. railroad, 7 %, $1,000 bonds, $215,000.
First mortgage, three C.'s & I., 30-year bonds, $3,000,000.
First consolidated mortgage, three C.'s & I., $4,073,000.
General consolidated mortgage, three C.'s & I., $3,205,000.
First mortgage, I. & St. L., $2,000,000.
Second mortgage, 6 %, 30 years, $500,000.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. Dye: I offer to prove by this witness that at the time they made the assessment of the railroad property of the three C.'s & St. L. Railroad Company they had before them Poore's Manual, pages 994 and 995, showing the amount of the funded debt upon the various lines of railroad and upon the various portions of said railroad which had been united by consolidation, showing that separate mortgages rested upon the three C.'s & I. railway, upon the C., I., St. L. & C. railway, and upon the I. & St. L. railroad, prior to the
100 consolidation, which are still liens upon the separate property.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Q. I will ask you if at the time you were making the assessment of the properties of the three C.'s & St. L. Railway Company, the plaintiff herein, and before the 8th day of September, 1891, the State board of tax commissioners of Indiana did not have before it as evidence page 994 of Poore's Manual for the year 1890, showing that the three C.'s & St. L. Railway Company owned $5,000,000 of the capital stock of the Cairo, Vincennes & Chicago Railway Company, one-half of the capital stock of the Peoria & Eastern Railway Company, all the second-mortgage bonds of the Cincinnati, La Fayette & Chicago Railroad Company, and $1,797,850 of its capital stock; that the plaintiff owned the entire funded debt of the Vernon, Greensburg & Rushville Railroad Company, the entire funded debt and 70 % of the capital stock of the Vernon, Greensburg & Rushville Railroad Company, the entire funded debt and 61 % of the capital stock of the Columbus, Hope & Greensburg Railroad Company, and owned one-half of the stock and bonds of the Kankakee & Seneca Railroad Company, lying wholly in the State of Illinois, and $616,450 of the capital stock and $526,000 of the bonds of the Cincinnati & Springfield Railway Company, a railroad lying wholly within the State of Ohio, and no part of the plaintiff's consolidation, and if that was not the only evidence upon the subject of the ownership of these stocks and bonds by the plaintiff which was introduced before the board.

101 Now, I say to the court, I offer this as a preliminary question.

To this question the defendant objected on the ground and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now, we offer to prove by this witness the facts set forth in the foregoing question, to wit, that at the time the State board of tax commissioners were making the assessment of the properties of the three C.'s & St. L. Railway Company, the plaintiff herein, and before the 8th day of September, 1891, it had before it as evidence page 994 of Poore's Manual for the year 1890, showing that the three C.'s & St. L. Railway Company owned $5,000,000 of the capital stock of the Cairo, Vincennes & Chicago Railway Company, one-half the capital stock of the Peoria & Eastern Railway Company, all the second-mortgage bonds of the Cincinnati, La Fayette & Chicago Railroad Company, and $1,797,850 of its capital stock; that the plaintiff owned the entire funded debt and 70% of the capital stock of the Vernon, Greensburg & Rushville Railroad Company, the entire funded debt and 61% of the capital stock of the Columbus, Hope and Greensburg Railroad Company, and owned one-half of the stocks and bonds of the Kankakee & Seneca Railroad Company, lying wholly in the State of Illinois, and $616,450 of the capital stock and $596,000 of the bonds of the Cincinnati & Springfield Railway Company, a railroad lying wholly within the State of Ohio, and no part of plaintiff's consolida-

102 tion, and that that was the only evidence upon the subject

of the ownership of these stocks and bonds by the plaintiff which was introduced before the board.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

73 Q. Did not said board, at the time it was engaged in the consideration of the assessment of the property of plaintiff, have before it page 995 of Poore's Manual for 1890 as evidence showing that the Cairo, Vincennes & Chicago railway is a railroad from Cairo, Ill., to Danville, Ill., 258 miles, with a branch from St. Francisville, Ill., to Vincennes, Ind., of eight miles, being a total of 266 miles, operated under contract by the three C.'s & St. L. Railway Company, having a capital stock of $5,000,000 of dollars, all owned by the three C.'s and St. L. Railway Company?

This is also asked as a preliminary question.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We now offer to prove the facts stated in the question, to wit, that said board, at the time it was engaged in the consideration of the assessment of the property of the plaintiff, did have before it page 995 of Poore's Manual for 1890 as evidence showing that the Cairo, Vincennes & Chicago railway is a railroad from
103 Cairo, Illinois, to Danville, Illinois, 258 miles, with a branch from St. Francisville, Illinois, to Vincennes, Indiana, of 8 miles, being a total of 266 miles, operated under contract by the three C.'s & St. L. Railway Company, having a capital stock of $5,000,000, all owned by the three C.'s & St. L. Railroad Company.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

74 Q. I also ask the witness the following question: Did not said board at the time it was making such assessment have before it as evidence pages 994 and 995 of Poore's Manual, showing that the gross earnings of the entire system of plaintiff's company, exclusive of the Peoria & Eastern and the Cairo & Vincennes, for the year ending June 30th, 1889, were $11,453,992.66 and operating expenses $7,594,171.74, making net earnings $3,859,820 and ninety-two cents?

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove by this witness the facts stated, to wit: That said board at the time it was making such assessment had before it as evidence pages 994 and 995 of Poore's Manual, showing that the gross earnings of the entire system of plaintiff's company, exclusive of the Peoria & Eastern and the Cairo & Vincennes, for

the year ending June 30th, 1889, were $11,453,992.66 and operating expenses $7,594,171.74, making net earnings $3,859,820.92.

104 75 Q. And did not the board have before it Poore's Manual, page 994, showing the earnings of the three C.'s & St. L. railway for the six months ending December 31st, 1889, to be $5,729,678.19 and the expenses $3,900,809.18?

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove the facts set out in that question, to wit, that said board also had before it Poore's Manual, page 994, showing the earnings of the three C.'s & St. L. railway for the six months ending December 31st, 1889, to be $5,729,678.19 and the expenses $3,900,809.18.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

76 Q. Did not said board at the time they made the assessment of the railroad properties of the plaintiff have before them a copy of the Investors' Guide, showing the value of the stocks of the three C.'s & St. L. Railway Company on the 1st day of April, 1891, as evidence?

To this question the defendant objected on the ground and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove the facts stated in that question, to wit, that said board at the time they made the assessment of the railroad property of the plaintiff did have before them as
105 evidence a copy of the Investors' Guide, showing the value of the stocks of the three C.'s & St. L. Railway Company on the first day of April, 1891.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

77 Q. Did not said board at the time they made the assessment of the railroad properties of the plaintiff have before it said Investors' Guide and, as appears by the pages of said Investors' Guide, have before it as evidence that the preferred stock of the three C.'s & St. L. Railway Company, amounting to $10,000,000 and resting upon all the property of the company and all of its assets, real and personal, of every kind, was valued at 95 cents on the dollar on the first of April, 1891, and did not it appear from the pages of said Investors' Guide in evidence before said board when they were considering the values of the property of the three C.'s & St. L. railway that the common stock on the first of April, 1891, resting upon all the property of said company, real and personal, within and without the State of Indiana was valued at 60 cents on the dollar?

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove the facts stated in the question, to wit, that said board, at the time they made the assessment of the railroad properties of the plaintiff, did have before it said Investors'
106 Guide and, as appears by the pages of said Investors' Guide, did have before it as evidence that the preferred stock of the three C.'s & St. L. Railway Company, amounting to $10,000,000 and resting upon all the property of the company and all its assets, real and personal, of every kind, was valued at 95 cents on the dollar on the first of April, 1891, and that it did appear from the pages of said Investors' Guide in evidence before said board when they were considering the values of the property of the three C.'s & St. L. railway that the common stock on the first of April, 1891, resting upon all the property of said company, real and personal, within and without the State of Indiana was valued at 60 cents on the dollar.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

78 Q. Did not the State board, while they were engaged in the consideration and valuing and assessing the property of the three C.'s & St. L. Railway Company, have before it page 995 of Poore's Manual for 1890 as evidence, upon which appears the cost of the road in Ohio and Indiana at $45,816,105.67?

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove the facts stated in the question, to wit, that the State board when they were engaged in the consideration of valuing and assessing the property of the three C.'s & St. L. Railway Company did have before it page 995 of Poore's Manual
107 for 1890 as evidence, upon which appears the cost of the road in Ohio and Indiana at $45,816,105.67.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

79 Q. Mr. Matthews, will you state to the court whether or not it is a fact that the plaintiff, The Cincinnati, Chicago & St. Louis Railway Company, is a corporation formed by the consolidation of railroads in the States of Ohio and Indiana?

Mr. KERN: We object to that. It is not pertinent to any issue here.

Mr. DYE: You do not make the objection that it is not the best evidence?

Mr. KERN: No, sir.

The ATT'Y GENERAL: I think if it was material to be proved you could prove it some other way. It is incompetent and immaterial.

The COURT: The question is, do you object to it because it is not the record or on other grounds?

Mr. DYE: I suppose there might be a question as to whether it was the best evidence, but we want to prove the fact in the record. If it is competent otherwise I suppose gentlemen will not insist on my having the articles of consolidation brought here, if it is held to be competent. The purpose of the proof is to show just the fact that it is a corporation existing in two States, a consolidation. There is no other purpose except that.

Mr. KERN: I do not understand what it proves pertinent
108 to this issue.

Mr. DYE: We have alleged here that this is a corporation existing in two States, and that values in one State have been imported into another. Without going into that matter in detail, your honor understands just what we allege in our complaint: that this is a corporation that exists in two States, and that it has valuable property in both States. It is a preliminary question to show that it is a consolidation, and that — exists in two States.

Mr. SMITH: What are the facts? When was this consolidation made?

Mr. DYE: I will state the facts.

Mr. SMITH: We need not have any difficulty about this.

Mr. DYE: The fact is that about the 27th day of June, 1889, the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, known as the three C.'s & I., and owning a line of railway from Cleveland, Ohio, to Cincinnati, Ohio, with a branch from Gallion, Ohio, to Indianapolis, Ind., was consolidated with the Cincinnati, Indianapolis, St. Louis & Chicago railway, a company owning a line of road from Cincinnati, Ohio, to La Fayette, Ind., and also with the Indianapolis & St. Louis railway, a company owning a line of road from Indianapolis, Ind., to Terre Haute, Ind., forming a new consolidation, called the three C.'s & St. L. railway, and this consolidation of these companies existing in Ohio and Indiana was made in pursuance of the statutes of Ohio and of the statutes of Indiana.

Mr. SMITH: You say in that name.

109 Mr. DYE: Yes, sir; there is no technical question about it. I want to prove the fact that the company own properties in the different States.

Mr. SMITH: I don't think we need to have any trouble about it. It is not admitted, but we will not deny it. I don't know that the witness knows anything about it. I will take your statement for it.

Mr. KERN: Your statement is true. I think I will admit your statement.

Mr. DYE: Let it be shown that that statement is admitted.

Judge CLAYPOOL: We understand it is only preliminary to something else.

Mr. KERN: There is no question but what this road, this system, runs in three States.

Mr. DYE: The consolidation proper stops at Terre Haute and the leased lines run into the other States.

80 Q. Mr. Matthews, in the record of the proceedings of the State board of tax commissioners, page 212, the board says: "Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of railroads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth." Now, I desire you to answer whether you made any deductions or any allowances for deductions from the value of the Fairland, Franklin & Martinsville railway.

110 To this question the defendant objected on the grounds and for the reasons heretofore stated.

Mr. DYE: I am not now asking as to anything except what deductions they made, and I think it is relevant upon many grounds under this complaint, but I cannot argue them without occupying more time than is desirable.

The COURT: I will sustain the objection; I think it is the same question, practically.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: I now offer to prove by the witness the facts indicated in the question.

81 Q. In your report on the same page, 213, you say, "In arriving at the basis for the estimate of said values the board has considered the cost of the construction and equipment of said road, the market value of its stocks and bonds, the gross and net earnings of each of said roads, and all other matters appertaining thereto and that would assist the board in arriving at the cash value of the same." In making the assessment of the Cincinnati, La Fayette & Chicago railway, extending from Templeton, Indiana, 23.76 miles, to the State line between Indiana and Illinois, you increased the value from $6,000 to $31,000 upon the main track per mile, while as to the 18 miles of road from Templeton to La Fayette, which carries the freight and traffic going over the C., L. & C., and in addition thereto the freight and traffic of the Lake Erie and Western, you assessed the same at $14,000 per main track per mile. Now, I desire to know whether you took into consideration in arriving at the basis for the estimate of the values of the Cincinnati,

111 La Fayette & Chicago railway from Templeton to the Illinois State line the market value of any stocks; and, if so, what stocks.

Mr. KERN: To that we object for two reasons: First, the question assumes certain facts to exist which are not proved, and, second, for the reason that the plaintiff has no right to inquire into the matters which the board considered or the evidence before the board.

Mr. DYE: I think, probably, that question is obnoxious to the first objection and I will eliminate that element and ask this question:

82 Q. In the assessment of the Cincinnati, La Fayette & Chicago railway, extending from Templeton, Indiana, to the Illinois State line, in arriving at the basis for the estimate of the value which you placed upon the main line of that road, did you consider the market value of any stocks; and, if so, of what stocks did you consider the market value?

Mr. KERN: We object to that, may the court please, for the reason that what the board considered and what operated upon the minds of the individual members of the board in arriving or by which or through which they arrived at the amount finally fixed is not competent to be proved.

Mr. DYE: Now I want to state also, may the court please, that this is a preliminary question and that we propose to follow it up and to show that the stocks which the board considered in fixing this value upon the road named were not the stocks of the corporation named at all, but that they were stocks of another and different corporation; that these stocks represented and rested upon
112 another and different railroad and represented lines of railroad entirely without the State of Indiana and entirely without the jurisdiction of the tax laws of Indiana and represented personal property held by the company whose stock was considered, amounting to millions of dollars. They adopted a different rule for the railroads than they did as to the real estate by assessing them according to their debts, bonds, and mortgages, and they assessed no other real estate that way. They adopted a rule for railroads which operated to discriminate in favor of State railroads.

The COURT: However, they assessed the property in Indiana, and I think you cannot go into their mental processes.

Mr. KERN: We desire to let the record show at this point, may the court please, that the defendant will interpose no objection to any question asked by the plaintiff as to whether or not the State board of tax commissioners assessed and valued any bonds, stocks, or anything else outside of the State, and that we will not object to any question asked any member of the State board of tax commissioners as to whether or not that board assessed anything else than railroad track and rolling stock inside of the State of Indiana.

Mr. DYE: Then I understand that covers the question that I have just asked.

Mr. KERN: Not by a long ways.

Mr. DYE: I desire to ask counsel whether their proposition covers the question that I have just asked.

113 Mr. KERN: It does not. The question you have just asked goes to what was considered by the board in arriving at their assessment; whereas my proposition went to the question of assessment and valuation, the fact as to what property was assessed, and not what was considered.

83 Q. Mr. Matthews, in the assessment of the Fairland and Martinsville road did you or not consider the market value of any stocks and bonds; and, if so, what stocks and bonds?

Mr. KERN: We object for the reasons stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by the witness that in the assessment of the Fairland, Franklin & Martinsville railroad the board did consider the market value of the stocks and bonds of the three C.'s & St. L. railway, including bonds resting upon property wholly without the State of Indiana, including stocks of the consolidated company, covering millions of dollars of personal property owned by that company which had never been brought into the State of Indiana, covering lines of road of earning capacity more than twice the amount of any lines in Indiana belonging to the plaintiff, and we propose to follow this up with proof that the Fairland Company was no part of the consolidated company, the Fairland road, but was a corporation owned by the Fairland, Franklin & Martinsville Railway Company and had no stock except $50,000 and no outstanding indebtedness.

114 Mr. KERN: Inasmuch as the offer to prove is entirely outside of the whole range of the question, I don't know that we have any objection to it.

Mr. DYE: That is a question of what we expect to follow it with.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

84 Q. I will ask you this question: Whether in the assessment of the Vernon, Greensburg & Rushville railway and the Columbus, Hope & Greensburg railway the State board of tax commissioners, in arriving at the basis for the estimate of the values of said roads, considered the market value of any stocks or bonds; and, if so, of what stocks and bonds they considered the value.

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that in arriving at the basis for the estimate of the values of the two roads above named the board of commissioners considered, among other things, the market value of the stocks and bonds of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, such stocks representing property and values, real and personal, wholly without the State of Indiana, and such bonds, part of them, resting upon real estate wholly without the State of Indiana, and I propose to follow this up by proof that neither of these railroads are any part

115 of the consolidation of the plaintiff; that both the railroads named are owned not by plaintiff, but one by the Vernon, Greensburg & Rushville Company or the stockholders thereof and one by the Columbus, Hope and Greensburg Railroad Company or the stockholders thereof, and the plaintiff is not the owner of all the

stock in either of said roads, but that they are leased to the plaintiff and operated by it as leased lines.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

85 Q. Mr. Matthews, you know as a fact that the three C.'s & St. L. Railway Company itself extends outside of the State of Indiana and is engaged in the carriage of freight and passengers from points outside of the State of Indiana to points within the State of Indiana and from points within the State of Indiana to points without the State of Indiana.

Mr. KERN: We admit that. The court takes judicial notice of it.

86 Q. In the assessment which you placed upon roads owning lines extending out of the State of Indiana into other States did the board consider the value of the stocks and bonds and gross and net earnings of such roads?

To this question the defendants objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I will state the grounds upon which we ask that.

116 We have alleged that in pursuance of a rule this board discriminated against plaintiff's roads lying partly outside the State by taking into consideration in making the assessment the market value of stocks and bonds of said road, which stocks and bonds covered property without the State; whereas, as to roads wholly within the State, the market value of the stocks and bonds would not represent property without the State and would be limited and confined to values wholly within the State.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now, we propose to prove by this witness the facts stated in the foregoing question, to wit, that in the assessment which the board placed upon roads owning lines extending out of the State of Indiana into other States the board considered the value of the stocks and bonds and gross and net earnings of such roads.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

87 Q. In assessing the Indianapolis & St. Louis railroad, you placed the main track at $27,900 per mile, while you assessed the main track of the Terre Haute & Indianapolis railroad at $21,800 per mile, being $6,000 per mile less than the track of the St. Louis division of the three C.'s & St. L. or the I. & St. L. railroad. Now, in making this assessment, $21,800 per mile or $27,900 per mile upon the main track of the St. Louis division of the three C.'s & St.

117 L., did you or not consider the gross earnings of the three C.'s & St. L. railway, including earnings derived from carrying

freight and passengers from points within to points without the State of Indiana or through the State of Indiana, while engaged as a common carrier in interstate commerce?

To this question the defendant objected on the grounds and for the reasons heretofore stated.

Mr. DYE: This is a preliminary question, may it please the court. We propose to follow it up by proof that in making the assessment upon the I. & St. L. they considered the gross and net earnings of the three C.'s & St. L. derived from interstate commerce. We propose to prove that the earning capacity of that road depends almost wholly upon through and interstate commerce; that its local business is very light. We propose also to show that the net earnings of the I. & St. L. are 25 % less than the net earnings of the T. H. & I., which is a parallel line a few miles distant reaching from Indianapolis to Terre Haute. We propose to show that the road is an older road, more solid, and in better physical condition, and that it owns large terminal properties at Terre Haute, and reaches by its switches all the manufactories in Terre Haute, whereas the St. Louis division does not; it enters Terre Haute at a union station where other roads come, whereas the properties of the Indianapolis & St. Louis road are isolated and inferior; that the Terre Haute and Indianapolis road has connections for business with the Pennsylvania lines east from Indianapolis, over which a vast volume of commerce, State and interstate, is carried, and that the business done over the Terre Haute and Indianapolis
118 roads, State and interstate, is larger than that done over the St. Louis division, and that it has its connections over leased lines, the St. Louis, Vandalia and Terre Haute road, just as the St. Louis division has its connections west over a leased line, the St. Louis, Alton & Terre Haute, both reaching east and terminating in East St. Louis, and that in every respect the Terre Haute and Indianapolis road is equal, if not superior, to the St. Louis division of the three C.'s & St. L.

We further propose to prove that, by reason of the adoption of this rule of taking into consideration stocks and bonds and gross and net earnings of the entire system of the consolidated company in more than one State, they have discriminated in favor of roads doing a larger amount of business and better physical condition lying wholly in this State by loading up upon roads that are parts of systems values that don't inhere in the roads, nor anything pertaining to them, but values that belong to the owners of the road simply and rests solely upon property wholly without the jurisdiction of the State of Indiana.

That is a statement of what we propose to follow this up by; that is what we propose to prove.

The court sustained the defendant's objection to the question; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now, we propose to prove by this witness, in answer to this question, that they valued the St. Louis division of the three

C.'s & St. L. railway, extending from Indianapolis to Terre Haute, 72 miles, at $27,900 a mile upon the main track, $6,000 a mile higher than the Terre Haute & Indianapolis railway, and
119 that in making such valuation he considered and included and embraced values derived from gross earnings resulting from interstate commerce and earned in carrying on interstate commerce from and through the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

88 Q. In making the assessment of railroads in the State of Indiana, in arriving at the basis for the estimate of values, when said roads were operated by or leased to or parts of a consolidated road or system of roads extending into other States, existing partly in the State of Indiana and partly in other States, state whether you considered the market value of stocks and bonds of the consolidated road or of the road or resting upon the entire property of such roads in the different States, whereas in assessing roads wholly within the State of Indiana you considered stocks and bonds and earnings resting upon property and earned by property wholly within Indiana.

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that the State board of tax commissioners in assessing the railroads in Indiana, in arriving at the basis for the estimate of the values of such roads, when the roads were wholly situated within the State, considered
120 the cost of construction and equipment of said roads and the market value of the stocks and bonds and the gross and net earnings of each of said roads, and when the roads were partly within this State and partly without this State, and were operated by or leased by a road partly within and partly without the State or by a consolidated road extending without the State, that in arriving at the basis for the estimate of the value of the leased or operated road or of the part of said road in the State of Indiana they considered the market value of the stocks and bonds of the whole system and of the consolidated road when said stocks and bonds represented or rested upon property wholly without the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

89 Q. Mr. Matthews, you say you made liberal allowance for all proper deductions. Did you make those allowances from a gross sum in the case of the three C.'s & St. L. property and leased and operated lines operated by it, considering the market value of the stocks and bonds of the whole system and the gross and net earnings of the whole system, or did you make the deductions from the separate valuations of the separate lines?

To this question the defendant objected on the ground and for the reasons heretofore stated.

Mr. DYE: That is not the same question we have had heretofore, may the court please. We offer this question and we offer to follow up this proof by proving by this witness that the board of taxation fixed its valuation upon the lines in Indiana by making a
121 unit of value derived from the stocks and bonds and gross and net earnings of interstate commerce of the three C.'s & St. L. properties, and then after making deductions distributed that unit of value over the various lines of the three C.'s & St. L., and that they did not fix any valuation separately upon any single lines leased, operated, or owned by the three C.'s & St. L. property in this State.

The court sustained the objection; to which ruling the plaintiff excepted.

Mr. DYE: We offer to prove the facts stated in that question, to wit, that the board did make those allowances referred to from a gross sum in the case of the three C.'s & St. L. property and leased and operated lines operated by it, considering the market value of the stocks and bonds of the whole system and the gross and net earnings of the whole system, and did not make the deductions from the separate valuations of the separate lines.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

90 Q. Did you fix the value upon the St. Louis division of the three C.'s & St. L. railway—I mean did the board—as returned to the auditor of state separately or did you value that road as a part of the three C.'s & St. L. system in Ohio and in Indiana, and did you, having reached a unit of value by considering the whole system, distribute that unit of value according to mileage over the operated and leased lines and parts of roads in Indiana of the plaintiff?

122 To this question the defendant objected on the grounds and for the reasons heretofore stated.

Mr. DANIELS: May it please the court, this is not a question of mental process. This witness was a member of that board. It is in evidence here that the three C.'s & St. L. is a consolidated company, and it is in evidence that it owns lines in Ohio, Indiana, and Illinois—leased lines in Illinois. This board made up its return of its assessment of the property of the three C.'s & St. L., tabulated those returns, and certified them to the auditor. This question does not ask Mr. Matthews, as a member of that board, what their mental process was in arriving at the value of the I. & St. L. division. It does ask him whether or not that board, in fixing the value of the I. & St. L. division, fixed it upon the I. & St. L. road as a distinct road, extending from Terre Haute to Indianapolis, or whether they fixed a value upon the Terre Haute and Indianapolis roads as a part of the consolidated line constituting the three C.'s & St. L. road, which is described in evidence. It is not a question of

mental process. It is a question of fact as to what they did, not as to how they did it—not as to how they got at it, but what they did.

Mr. KETCHAM: We submit, may the court please, that this is just another form of the same question, and that the court has heard abundant argument upon it.

The COURT: It seems to me that it is the same question we have had before. I will sustain the objection.

To which ruling of the court the defendant at the time excepted.

123 Mr. DYE: We offer to prove by this witness that this board in fixing the value upon the St. Louis division of the three C.'s & St. L. railway which they returned to the auditor did not fix any separate value upon said property, the St. Louis division of the three C.'s & St. L. railway, but that they fixed a value in gross as a unit upon the entire property of the three C.'s & St. L. system in Indiana and in other States, and then arbitrarily distributed such value upon the St. Louis division and other divisions of the plaintiff's road in proportion to mileage.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

91 Q. Did you or not, in assessing and fixing the value of the St. Louis division and of the Chicago division and of the leased and operated lines of the three C.'s & St. L. railway in the State of Indiana, place or add anything to the value of said lines by reason of the fact that it had a franchise?

Mr. KETCHAM: We object to that, may the court please, for the reason that this question is calling for the mental operations of the board in the conduct of its assessment. "Did you, having arrived at a certain definite amount that you desire to extend, did you then go to work and add to that by considering and taking into account something further to the sum you had arrived at before that in some other way?" We think this is not tantamount to a question which we have no objection to as to whether they assessed any value against the road on account of the franchise, but that it is calling
124 for the operation of the minds of the board, and the mere fact that he only calls for a little on the edge of the mind of the board does not take it out of the rule that the court has established, and that we insist is the law.

Mr. SMITH: We desire the record to show that if he desires to ask the witness whether the board valued a franchise or not we will not object to it.

The COURT: It seems to me that while it does not use the word "consider" and there is eliminated some of the elements of the former question, yet at the same time they must, having arrived at certain conclusions according to the question, without adding the franchise, and then whether or not they did after that arrive at such conclusion and add the franchise, which, it seems to the court, would be a mental process. I will sustain the objection.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that in assessing the value and fixing the value as returned by the board to the auditor of state that it took into account the fact that the three C.'s & St. L. Railway Company had a franchise, and that it added to the value of the road by reason of the fact that it had a franchise and the facts as stated in the question, to wit, that in assessing and fixing the value of the St. Louis division and of the Chicago division and of the leased and operated lines of the three C.'s & St. L. railway in the State of Indiana the board placed a value or added to the
125 value of said lines by reason of the fact that it had a franchise.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

92 Q. I will ask you, Mr. Matthews, if in assessing the values of the roads owned, leased, or operated by the three C.'s & St. L. Railway Company in the State of Indiana the valuation of such roads by the board embraced or included any value whatever on account of the franchise.

To this question the defendant objected on the ground and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove that in assessing the values of the roads owned, leased, or operated by the three C.'s and St. L. Railway Company in the State of Indiana the valuation of such roads by the board embraced and included a value on account of the franchise.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

93 Q. Now, Mr. Matthews, I will ask you whether or not the board in assessing the three C.'s & St. L. properties in Indiana added anything to the amount of your assessment against said properties or increased the amount of the assessment on account of the fact that said road had a franchise.

126 Mr. KETCHAM: That is the same question that Mr. Dye asked before in almost the same words, and we object to it for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove the facts as stated in the question, to wit, that the board in assessing the three C.'s & St. L. properties in Indiana added something to the amount of the assessment against said properties or increased the amount of the assessment on account of the fact that said road had a franchise.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

94 Q. I will ask you now, Mr. Matthews, whether, in assessing the roads owned, leased, and operated by the three C.'s & St. L. Railway Company in Indiana, the board added anything to the assessment of the several roads as returned by it or increased the assessments thereof or either of them by reason of the business or gross earnings of said road in carrying transportation from points within the State of Indiana to points without the State of Indiana or through the State of Indiana.

To this question the defendant objected on the ground and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness the fact that is asked for in the question, to wit, that in assessing the roads owned, leased,
and operated by the three C.'s & St. L. Railway Company in
127 Indiana the board added something to the assessment of the
several roads as returned by it or increased the assessment thereof or either of them by reason of the business or gross earnings of said road in carrying transportation from points within the State of Indiana to points without the State of Indiana or through the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

95 Q. In making the assessment of the properties of the plaintiff owned, operated, and leased in the State of Indiana did you embrace in your valuation returned to the auditor and make a valuation of the preferred or common stock of the three C.'s and St. L. railway?

Mr. SMITH: We interpose the same objection to this question.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. SMITH: If Mr. Dye wants to ask this witness whether he valued the common or preferred stock we will not object.

Mr. DYE: I will get the record on this question first. We offer to follow this up, may the court please, with proof that this stock of the three C.'s & St. L. Railway Company is stock representing property outside of the State.

The COURT: I don't think it is competent. I will sustain the objection.

To which ruling of the court the plaintiff at the time excepted.

128 Mr. DYE: I offer to prove by this witness that in making the
assessment of the lines owned and operated and leased by the three C.'s & St. L. Railway Company in the State of Indiana that the board valued and embraced in the valuation returned by it to

the auditor of state and in the assessment which it made of said lines the values of stocks of the three C.'s & St. L. Railway Company resting in part on property wholly outside of the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Mr. KERN: That offer to prove does not correspond to the question.

The COURT: That don't make any difference.

96 Q. In making your assessment of owned, operated, and leased lines of the three C.'s & St. L. Railway Company in the State of Indiana, did you make any estimate or valuation of the bonds of the three C.'s & St. L. Railway Company resting upon property without as well as within the State of Indiana, and embrace such valuation in your assessment and in the return of the value of the various properties of the three C.'s & St. L. in this State?

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. SMITH: At this point I repeat and I ask it to go into the
129 record that if Mr. Dye desires to ask Mr. Matthews whether the board valued the franchise of this road we will not object.

Mr. KETCHAM: Or the stocks or bonds.

The COURT: Mr. Dye stated that he would not ask your question.

Mr. SMITH: I want it to go into the record at this point that we will not object to any question propounded to this witness which will prove the fact that the valuation was fixed upon a franchise or upon stocks or bonds within or without the State.

Mr. DYE: The only question now is whether or not the court will sustain the gentleman's objection to the question. I object to anything going into the record of that sort, and move to strike it out. I ask questions and the gentlemen object to them. That is all there is of it. I know they are liberal. I have enjoyed the benefits of their courtesy and liberality, but this is a kind of liberality I am inclined to object to. The only point about it is that I don't want his statement. It has been made half a dozen times. Your honor has announced your ruling, and there is no use putting such statements into the record. I am trying to fix up my record.

Mr. KETCHAM: I know Mr. Dye is trying to fix up his record to protect his rights, but that is no reason why we should not be watching the record a little. The mere fact that Mr. Dye may think we are Greeks and don't care anything about our gifts is no reason why, while he is putting the record in a shape satisfactory to
130 him, we should not be travelling along by his side. We understand this, that in the practice of law there are two sides, and when one man travels along on one side the other man has a right to travel along by the side of him and watch him.

Mr. DYE: Let me go on. I could have had another question in by this time.

Mr. KETCHEM: It would have been the same thing, so it don't make any difference.

97 Q. I will ask you if the board of equalization in the equalizing of the real estate in the State of Indiana did not fix a value at which the real estate of the various counties was equalized not to exceed 70% on the dollar.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: In order that we may understand the ground upon which your honor rules on this question, we are now asking what value they placed upon the real estate in the board of equalization. That is admissible, we think, upon several grounds. We are not now seeking to contradict this record in any respect nor to go into the mental process in any particular. We simply want to know what value they equalized real estate at.

Mr. KERN: What for?

131 Mr. DYE: To show the only thing I ever got Mr. Smith to admit yet, that if they valued the real estate at 70% it is a violation of the constitutional provision requiring uniformity and equality in the assessment.

Mr. SMITH: Where did I admit that?

Mr. DYE: I will take that back. I do not want to stand anything on your admissions. I say I have understood that not to be questioned, but whether it is questioned or not there is a constitutional provision of that sort. I only want to call your honor's attention to it as we go along. The allegations of the complaint is pointedly put there that they did discriminate against these plaintiffs by adopting an ununiform and unequal rate of assessment as to the real estate. I understood this ruling to go so far as to say that we cannot prove anything of that sort in the State of Indiana.

The COURT: I was feeling so badly this morning I did not know whether I could come to court or not, and I have been feeling worse since I came; been in pain all the morning, so that I can scarcely give consideration to anything. I cannot be here this afternoon, and I will adjourn court until to-morrow and let this matter stand open.

Whereupon the court adjourned until to-morrow, Thursday, June 30th, 1892, at nine o'clock a. m.

132 THURSDAY, *June 30th*, 1892—9 o'clock a. m.

The court met pursuant to adjournment.

Present: The same as on yesterday.

The hearing of the testimony was resumed as follows:

CHARLES M. MEYERS, a witness for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. I will ask you if you paid the taxes that were paid in April, 1891, to the various treasurers in Marion county.

A. Yes, sir.

2 Q. For the three C.'s & St. L. railway upon its owned, operated, and leased lines?

A. Yes, sir; most of them, except the C., W. & M. taxes.

3 Q. How much did you pay for the three C.'s & St. L. to the treasurer of Marion county?

A. I paid $13,453.59.

4 Q. Upon the three C.'s & St. L. property, the main line?

A. Yes, sir.

5 Q. Now, I will ask you if the amount you paid to the other counties in the State is correctly set forth on page 37 of the complaint.

Counsel for the defendants objected to the question and the court sustained the objection.

6 Q. Do you recollect what receipt was taken or the form of the receipt?

A. I know in substance the form of the receipt.

7 Q. State what it was.

A. The payment was accepted as applying on the whole duplicate, the taxes chargeable on his duplicate to the three C.'s & St. L. railway, taken on account.

133 8 Q. And that payment of which you have testified did not embrace any sums paid on account of the Peoria & Eastern between here and the Illinois line nor the old O., I. & W. road between Indianapolis and the Ohio Line?

A. No, sir.

9 Q. And did that payment embrace any payment on account of real estate other than railroad track and rolling stock?

A. No, sir.

10 Q. Do you know whether the taxes due upon other property and real estate, upon property other than railroad track and rolling stock, was paid in full?

A. Yes, sir; they were all paid in full.

Cross-examination.

Questions by JOHN W. KERN, Esq.:

11 Q. What was the amount of the taxes other than railroad track?

A. I have not the memorandum of what I paid on other property, other than railroad track and rolling stock, but my recollection is something about 2,500 or 3,000 dollars, the first half.

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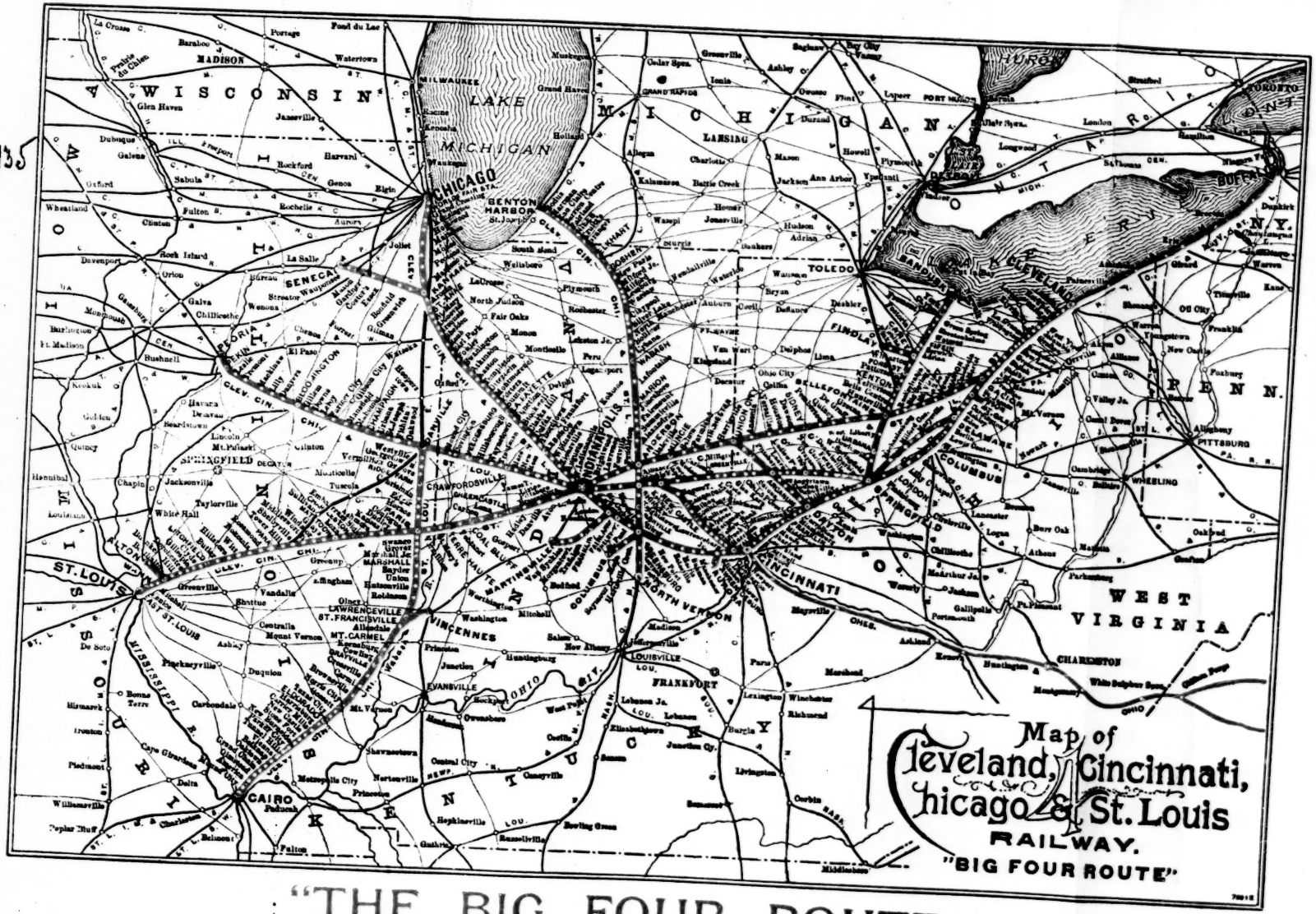
Backus

p. 135

Exhibit
"A"

June 30/92



"THE BIG FOUR ROUTE."

By Mr. DYE:

12 Q. Look at that map (showing witness). Please tell us if it is substantially a correct outline of the roads owned, operated, and controlled by the three C.'s, St. L., in Ohio, Indiana, and Illinois.

A. The dark lines or heavy lines show the Big Four railway system substantially correctly. It does not follow the meanderings of the creeks and the valleys, but it shows the towns through which it runs and the States through which it runs.

13 Q. And the general direction of the line?

A. Yes, sir.

134 Mr. DYE: We offer that map in evidence, so that we may have a clearer idea of the location of the various lines of the road that are assessed. It is accurate enough for the purpose of this case.

The said map was admitted in evidence and marked Exhibit "A," the same being in the words, lines, letters, and figures following, to wit:

(Here follows map marked p. 135.)

136 By Mr. KERN:

14 Q. This payment made by you was received by the county treasurer as a partial payment of the taxes of the road on railroad track and rolling stock?

A. The way in which it was received is stated on the receipt, received on account of —, although it covered the same equal to the first half of the taxes chargeable in this county.

By Mr. KETCHAM:

15 Q. Chargeable or charged?

A. Charged or placed on the duplicate, either one.

By Mr. KERN:

16 Q. You declined to pay. The purpose of making this payment was to express a declination to pay the whole assessment on railroad track and rolling stock as shown by the treasurer's duplicate?

Mr. DYE: I think what he declined to do is not material. I do not care, though.

The WITNESS: I did not decline to do anything. I simply tendered the money and asked for a receipt, and the money was received and the receipt signed.

17 Q. As the representative of the company you knew that the amount you paid was not the full amount charged against the company?

A. Not the full amount for the whole year; no, sir.

18 Q. Neither on railroad track nor rolling stock. Do you know

what the amount that was charged against the rolling stock of the company exceeded the amount you paid on that account?

A. I do not understand that it did exceed that amount.

19 Q. So far as the rolling-stock account is concerned, then, you understand you paid the taxes in full?

137 Mr. DYE: I don't think they can cross-examine the witness as to his understanding, may the court please. He stated that what he did was to tender so much money and take a receipt in a certain form.

Mr. KERN: The purpose is to show they paid all the taxes legally due.

The COURT: You may cross-examine him as to anything he said or did there, but as to his understanding I do not think it would be proper to go into that.

20 Q. Did you ascertain when you went to pay the taxes that the amount charged against the rolling stock of the company in this county was the amount you paid, or was it more or less than the amount you paid?

Mr. DYE: Do you mean the amount charged for the year?

Mr. KERN: The amount charged at that time.

Mr. DYE: To that question, may the court please, we object as being ambiguous. The question is whether you are asking as to the April installment or the whole year. He has already testified that the payment he made was upon the taxes for the whole year.

Mr. SMITH: According to that theory there is no right to bring this suit; there are no taxes to enjoin.

Mr. KERN: By the amount as stated there I mean the April installment.

Mr. DYE: I still object.

The COURT: I will sustain the objection.

21 Q. I understand you to say the large lines on that map indicate the lines owned, leased, and operated by the Big Four system?

A. I understand it to be a map showing the Big Four system. Just how these lines are held or owned or operated I cannot
138 testify as to that.

22 Q. What do you understand the lines next largest in size to the one spoken of by you to indicate? For instance, that line that is indicated as running from Cincinnati southeast, the Chesapeake & Ohio road; why do you understand that is marked in a heavier line than most of the other roads on the map?

A. Because the Big Four trains arrive at Cincinnati and make close connection with the passenger trains on the Chesapeake & Ohio.

23 Q. Do you mean by that they have a running arrangement or connecting arrangement with the Chesapeake & Ohio?

Mr. DYE: I think that is immaterial here, if the court please. I object to the proof as to whether the Big Four road has a running arrangement with the Chesapeake & Ohio or any other road as be-

ing wholly immaterial and not cross-examination. It is a fact of which the court takes judicial knowledge that the Big Four has a running arrangement with the Chesapeake & Ohio and connects with all the roads running into the Union station at Cincinnati, Ohio.

Mr. KERN: May the court please, they introduce a railroad map. Upon it there appears a hundred lines of railroad. They prove that the railroad that are indicated by the heavy lines are the roads of the Big Four system. The most of these roads, as your honor will observe here, are very fine lines, very small. There are other roads, such as these, that are indicated with a line nearly as heavy as the line indicating the Big Four system. Now, they have introduced the map in evidence, and, it being here, I have a right on cross-examination to know what these heavy lines indicate and whether
139 the heavy lines indicate the Big Four system. I have a right to show, if I can, by the map, that they have a close running arrangement with these other roads, indicated in this way. In other words, I have a right to full information concerning this map.

The COURT: I will overrule the objection.

To which ruling the plaintiff at the time excepted.

A. I cannot testify as to the arrangement or whether there is any arrangement at all between the Big Four system or the officers of the Big Four and the officers of the Chesapeake & Ohio.

24 Q. I will ask you whether or not the cars of the Big Four system don't run directly from Indianapolis through Cincinnati over the Chesapeake and Ohio, whether that fact does not account for the heavy lines on the map.

Mr. DYE: May it please the court, I object to that question for the reason given in our objection to the previous question.

The COURT: I think the objection is well taken as to that.

25 Q. Do you understand by this map that all the roads that make close connection with the Big Four system are marked with lines such as indicate the Chesapeake & Ohio road—heavy lines—or is that the only heavy line on there running out of Cincinnati?

A. Yes, sir; that is the only heavy line, I believe, running out of Cincinnati.

26 Q. Now, am I to understand you that that is the only road that goes out of Cincinnati that the Big Four system makes close connection with?

Mr. DYE: I interpose the same objection to that also; it is
140 not cross-examination.

The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. I cannot tell about the connection of the trains running out of Cincinnati. I don't know.

27 Q. Do you understand from the map that the Chesapeake &

Ohio road is the only road running out of Cincinnati with which the Big Four system makes close connection?

A. Well, I would not say what the map indicated with respect to that. The map don't indicate anything with respect to that any further than probably it is done for the information of the public, showing that there is a line running east. It might indicate a close connection at Cincinnati.

28 Q. Then your understanding is that the only significance attached to that heavy line marked the Chesapeake & Ohio road is that the public may know that there is a line there that makes close connection with the Big Four system from the east?

A. Yes, sir; that is what I would understand from this map.

29 Q. You do not understand that it means that it is substantially under the same management?

A. No, sir.

30 Q. It would not mean that?

A. No, sir; it does not mean that. As I understand, it is not under the same management.

31 Q. It is under the same president, is it not? And I will ask you if that is not the reason why the heavy line is on the map.

Mr. DYE: We object to that question, may the court please, for the reasons already stated.

141 The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. I do not think that is the reason of the heavy line on the map.

32 Q. Now, can you give any other reason for that heavy line other than the one you have mentioned?

A. No, sir; I cannot give any other reason than that.

33 Q. And will you tell why it is that the line indicating the Baltimore & Ohio road running out of Cincinnati, while not so much as that indicating the Chesapeake & Ohio, is much larger than the most of the roads?

Mr. DYE: To that we object for the reasons already stated.

The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. I can only give a guess at it as to why that is made a little larger than some of the other lines.

34 Q. I will ask you whether that is not made a little heavier than most of the lines because it also makes close connection at Cincinnati for the East with the Big Four system.

A. I don't know whether it does or not.

35 Q. Do you know whether the Chesapeake & Ohio does?

A. It is a trunk line to the East. I presume that is the reason why it is made a little heavier than some of the other lines. That is only a presumption. I cannot testify about that.

36 Q. I observe on the map or you have said that the large lines

indicated the Big Four system. I observe, according to the map, that the heavy line extends to Buffalo and New York.

142 A. That line, the heavy line extending from Buffalo and New York, is a little heavier than most of the lines, but it is not the heaviest line.

37 Q. I will ask you whether the line marked on that map from Cleveland to Buffalo is not the heaviest line on the map.

A. No, sir; it is not.

And further the witness saith not.

143 I. N. WALKER, a witness for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. State your name.

A. I. N. Walker.

2 Q. Are you a member of the Indiana State board of tax commissioners and were you in the year 1891?

A. Yes, sir.

3 Q. I want to ask you, Col. Walker, I find on the 31st day of August, 1891, as reported on page 70 of the proceedings of the Indiana State board of tax commissioners, that "A committee of the Commercial Club of Indianapolis appeared and, through Wm. Fortune, secretary of said club, asked a reduction in the assessment of the city of Indianapolis to equalize the same with other cities of the State. George Wolf, township assessor, opposed any reduction, claiming that the assessment was not more than 80 per cent. of the cash value. Commissioner Walker stated that a reduction should be made in justice to the city of Indianapolis, as, after a comparison with other cities, Indianapolis will pay from 10 to 15 per cent. more taxes than any other city in the State." I will ask you what members of the board were present when Mr. Wolf made that statement and when you made the statement that follows it.

Mr. KERN: May the court please, we object to that question for the numerous reasons stated heretofore. It is going into the proceedings of the board and proving what some one man said before the board, and it is entirely irrelevant to any issue here.

Mr. DYE: This evidence, may it please your honor, is
144 offered to sustain the allegation of the complaint, found on page 29, that the State board charged with the duty of equalizing the assessment of real estate and railroad property was fully advised at the time of making such assessment of railroad track that the real estate as assessed by the local assessor in the State of Indiana was assessed at not more than 80% of its cash value, and yet with this knowledge they arbitrarily fixed a valuation upon railroad track and rolling stock in a sum more than twice its cash value. This is the allegation upon this particular point which charges that it was done fraudulently and with the intention to discriminate

against the railroad property and in favor of other real estate. We offer this evidence as tending to show—the question is not what it proves, but whether it is material and proves anything on this subject—that in a meeting where the members of the board were present the statement was made by one of the members of the board as asked in the question. Of course, we shall attempt to follow this up with other proof as to the knowledge of the members of the board and their connection, and we think the objection of the gentleman goes so far as to preclude a plaintiff who has brought a suit for fraud from introducing any evidence to show fraud until fraud has first been proved to the satisfaction of the court.

Mr. KERN: Now, let us see how ridiculous that is——

The COURT: I do not think I want to hear from the defendant on this proposition. I think the question shows that they all had different opinions in regard to the matter. The Commercial Club seems to have thought one thing, Assessor Wolf another, and
145 Mr. Walker another, but it was the duty of the board to make the assessment. They were not compelled to take what any one representative said as being the true cash value, but they were to determine what the cash value was or the assessed value. If the question goes to the point I think it does it is incompetent.

Mr. DYE: This is a preliminary question, may it please the court, and I am proposing to follow it up with proof of the knowledge of the members of this board that the rate, the value at which real estate was equalized, was not more than 80 % of its cash value.

The COURT: I will sustain the objection.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: May it please your honor, I offer to prove that at the time of the making of the statement which has been read, and which is set forth on page 70 of the Record of the State Board of Tax Commissioners, that the full board of tax commissioners was present and heard the statements of Wolf and the statements of Commissioner Walker.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

4 Q. Mr. Walker, I will ask you if any member of the board present at the time the statement was made on August 31st, 1891, by yourself and the statement by Mr. Wolf referred to in the last question raised any question or objection or made any protest that the statement was not correct at that time or at any subsequent time before the adjournment of the board.

146 Mr. KETCHAM: That is objected to, if the court please. It is based on a question which the court excluded.

Mr. DYE: I understand it presents the same question presented by the previous question, but I want to get the matter fully in the record.

The COURT: I understand it presents the same question.

Mr. KETCHAM: It is objected to for the same reasons.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We now offer to prove by this witness the facts set forth in that question, that at the time the statement was made, on August 31st, 1891, by the witness and the statement by Mr. Wolf, referred to in the preceding question, no member of the board at that time nor at any subsequent time before the adjournment of the board raised any question or objection or made any protest that the statement was not correct.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

5 Q. Mr. Walker, during the 40 days of the session of the taxing board state whether or not the time of the board was fully occupied.

A. The time that they were in session was; yes, sir.

Mr. DYE: I may want to ask Col. Walker some further questions, but that is all I want to ask him now.

Witness excused.

147 FRANK TAYLOR, a witness called for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. State your name.

A. Frank Taylor.

2 Q. Where do you live?

A. Indianapolis.

3 Q. How long have you lived in Indianapolis?

A. The last eleven years.

4 Q. In what business have you been engaged?

A. Loan agent for the Northwestern Mutual Life Insurance Company for ten years of it.

5 Q. In your business as loan agent for the Northwestern Mutual Life Insurance Company state what has been your duty with reference to familiarizing yourself with the values of real estate in the various counties of Indiana.

A. It was for the purpose of examining the securities offered in all the counties of the State.

6 Q. State whether or not that company does loan money in this State generally and whether it loans in large or small amounts.

A. It has during the time I was at work for them.

7 Q. Loaning large amounts or small amounts?

A. Both; as low as $1,000.

8 Q. The aggregate of its business I am inquiring for now.

A. I think it would equal any company in the State.

9 Q. Did you in the course of your business as agent for that

company become familiar with the values of real estate in the various counties in this State?

A. Yes, sir.

10 Q. Are you familiar with the values of real estate in the various counties in this State in April, 1891?

148 A. Yes, sir; more particularly the Central and Southern.

11 Q. In what counties are you most familiar with the values of real estate?

A. Allen, Bartholomew, Benton, Blackford, Boone, Brown—no, not Brown—Carroll, Clinton, Delaware, Elkhart, Fountain, Fulton, Grant, and most of the northern and central counties, and Henry.

12 Q. Do you know what the average value of real estate was, say, in Benton county on the first day of April, 1891?

A. Yes, sir.

13 Q. I will ask you what it was.

Mr. KETCHAM: We are objecting to that, may the court please, because it is irrelevant and immaterial, and it is utterly incompetent as tending to throw any light on any question in this case.

Mr. SMITH: I would like to inquire whether the object of that question is to show whether the real estate of Benton county was valued too low or too high. What is the object of it?

Mr. DYE: The object of that question is to sustain the allegation of our complaint that this board, with the intention of discriminating against railroad companies and of increasing the burden of taxation upon railroad companies in proportion to the value of the property owned by them and in favor of the holders of other property and the holders of farm lands in the State of Indiana, intentionally and purposely equalized farm lands at a rate less than its actual cash value and assessed railroad track and rolling stock at a sum in excess of its cash value. We think that that allegation constitutes a valid objection to the validity of this tax. We are

149 not asking your honor to make a new assessment, but we are asking your honor to determine whether this assessment was fairly and honestly made or whether there was an element of intentional discrimination in this assessment, fraudulently made, which would avoid it. We cannot, as a matter of course, introduce any proof to sustain that allegation unless we can show the value of farm lands and the value of railroad properties. Your honor seems to labor under the impression that we are asking you to reassess property.

The COURT: At the time I made that statement yesterday I was not considering that paragraph of the complaint. I thought I made that clear to you yesterday.

Mr. DYE: I will withdraw that remark, then. I do not want to have any misconstruction. I only want to be understood. The only reason I alluded to it was because I did not know exactly whether I had got my ideas clearly into your honor's mind. Now, if we cannot introduce any proof of any of the facts alleged in that paragraph by competent witnesses, of course we are helpless and every citizen of Indiana who complains of unjust discrimination

intentionally made by a tax board is helpless. No proof can be introduced by a competent witness to show any fact which tends to establish that allegation, although it contradicts no record, although there is no question—certainly none yet made—that the allegation constitutes a good cause of action at law.

Mr. KETCHAM: I am directed by the attorney general to withdraw the objection to the question for the present.

150 The COURT: The witness may answer the question, then.

A. $45 an acre.

14 Q. Do you know what was the average value of real estate in Carroll county?

Mr. KETCHAM: May the court please, I suppose the witness is to answer this question. I think he is not to read from the report of the State board of tax commissioners or read from that something higher or lower. I think the witness ought not to read from the report of the State board of tax commissioners.

The COURT: I think the rule in this should be as in other cases: that the party refreshing his recollection should refresh it from some memorandum made by him at the time. There is no other way for him to refresh his recollection that I know of.

Mr. DYE: Very well. Mr. Taylor, you will close that book.

The WITNESS: That is all I have—is my memorandums.

Mr. KETCHAM: A man cannot take a book and write down his testimony and then read it off.

Mr. DYE: We will have no question about that. I am going to proceed as indicated by the court. Give me the book, Mr. Taylor.

(The book was passed to counsel.)

15 Q. Do you know what the value is in Carroll county?

A. About $40.

16 Q. In April, 1891?

A. Yes, sir.

17 Q. Bartholomew county. If you know what the value in Bartholomew was in April, 1891, you can answer.

151 A. It ran from $40 up.

18 Q. What was the value of land in Blackford county?

A. B'ackford run close to $40.

19 Q. You mean by that that is the average cash value?

A. Yes, sir.

20 Q. That is what you understand I am asking for?

A. Yes, sir.

21 Q. What was the average cash value of farm lands in Boone county on the first of April, 1891?

A. Boone county runs $40 and up.

22 Q. Clinton county, the same question.

A. Clinton is worth $45 or more.

23 Q. Delaware county, the same question—what was the cash value, the average cash value, of farm lands in Delaware county April 1st, 1891?

A. Delaware runs from 45 to 50.

24 Q. What was the average cash value of farm lands in Elkhart county April 1st, 1891?

A. About $40.

25 Q. What was the average cash value of farm lands in Fountain county April 1st, 1891?

A. I would say about $35.

26 Q. What was the average cash value of farm lands in Grant county April 1st, 1891?

A. $45 to $50.

27 Q. What was the average cash value of the farm lands in Hancock county April 1st, 1891?

A. $45 and upwards.

28 Q. What was the average cash value of farm lands in Hendricks county April 1st, 1891?

A. About $40.

29 Q. And the same question as to Henry county.

A. $45 to $50.

30 Q. As to Howard county.

152 A. It would run close to $50.

31 Q. Huntington county?

A. $35.

32 Q. Jasper county?

A. Between 15 and 20; closer to 20 than 15.

33 Q. Johnson county?

A. $45.

34 Q. In all these cases it is the same question repeated. It is the average cash value April 1st, 1891. Now La Porte county.

A. I am not so familiar with La Porte county. There is some very good lands there and some very thin.

35 Q. Madison county?

A. Madison county is worth $50.

36 Q. Miami county?

A. It is worth $40.

37 Q. Montgomery county?

A. It is worth 40 to $45.

38 Q. Posey county?

A. I am not so familiar with Posey county. There is some as good land there as there is in the city, and there is some that is very low.

39 Q. Randolph county; do you know that?

A. Yes, sir.

40 Q. What is the average cash value of farm lands in Randolph county on April 1st, 1891?

A. Randolph county is worth about $40.

41 Q. What is the fair average cash value April 1st, 1891, of land in Rush county?

A. Rush county is worth $45.

42 Q. Shelby county?

A. Shelby county is worth $45.

43 Q. Tippecanoe county?

A. Tippecanoe county is worth about $40.

153 44 Q. Tipton county?
A. Tipton county is worth $45.
45 Q. Wabash county?
A. Wabash county is worth $45.
46 Q. Wayne county?
A. Wayne county would not average over $40.

Cross-examination.

Questions by W. A. KETCHAM, Esq.:

47 Q. You say, with reference to Bartholomew county, is is from 40 up. Up how high?
A. Between 40 and 45.
48 Q. When you say from 40 up you mean from 40 to 45?
A. Yes, sir.
49 Q. When you say, in regard to Boone, from 40 up that means from 40 to 45?
A. Yes, sir; and all those cases.
50 Q. When you say up you don't go any higher than $5 above that?
A. No, sir.
51 Q. What did you say land was worth, in your judgment, in Montgomery county?
A. $40 to 45 dollars, I think.
52 Q. In Grant?
A. Grant is worth close to 50 or 45.
53 Q. Which is it—45 or 50?
A. 45 and 50 I think I said—in that neighborhood.
54 Q. Howard?
A. Howard is worth about $50.
55 Q. Blackford?
A. Blackford, 40 to 45 dollars, I think.
56 Q. When you use *to* expression close to 40 what do you mean by that?
154 A. Well, I have examined these counties carefully and valued them from actual sales.
57 Q. When you use the expression close to 40 what do you mean by close to 40?
A. I mean I cannot remember just what my figures showed.
58 Q. Does that mean a little above 40 or a little bit below?
A. It might vary a trifle either way. My judgment would be that was right.
59 Q. The expression when you say close to a sum, that means either a little above or a little below; it don't mean that it is pretty nearly up to that amount?
A. No, sir.
60 Q. Delaware—what did you say in Delaware?
A. Delaware is worth about 45.
61 Q. Is it not worth 50?
A. From 45 to 50.
62 Q. In these counties where natural gas is present you have

added something to the value of the lands on account of natural gas?

A. The sales are higher there on that account.

63 Q. You have added a value to the land for farming purposes where you have understood that there was gas underlying it, have you not?

A. That was not the intention. The intention was to show what actual sales were in those counties. That is what I intended to base my valuation on.

64 Q. Do you know whether in your mind you took into consideration the fact of natural gas and the influence of the underlying natural gas upon the value of the farm lands?

A. Well, my basis was intended to be on the actual sales. I would go to these counties if a man wanted a loan there—the only way I could ascertain the value of it was to see what actual
155 sales were being made for in that locality and make the appraisement of the security offered.

65 Q. Your business was to look at lands in connection with loans that you were to make and handling real estate after mortgages had been foreclosed on it?

A. Yes, sir.

6 Q. Who passed on the question of values for the purpose of making loans? You?

A. Yes, sir.

7 Q. You have made loans and have taken property or the company has taken property in on foreclosure?

A. In no case where the parties lived.

8 Q. It has taken property in on foreclosures?

A. It has in four cases in ten years—that is, on loans made by me in ten years.

9 Q. And the company only owns, so far as the company is concerned—it only owned four pieces of property in the last ten years in the State?

A. Yes, sir.

10 Q. What did you say? What is your opinion as to the value in Jasper county?

A. Jasper county was between 15 and 20; nearer 15 than 20 dollars.

11 Q. What kind of land is there in Jasper county?

A. There is some very good land and some very wet land.

12 Q. This amount that you named, there is some land that is worth more than that?

A. Yes, sir; there is land there that will sell for $60.

13 Q. And some that would not sell at all?

A. No, sir; I do not think that.

14 Q. Now, you have no other business than the business of looking after the loans of the Northwestern in this State?

156 A. I have not had during that ten years.

15 Q. You are in that business now?

A. Yes, sir.

16 Q. When have you ceased to be in the business?

A. The first of April of this year.

17 Q. Now, the estimate that you have made is of what the property generally has been selling for in those counties or what in your opinion it ought to sell for or what it produced. What do you take into consideration in the determination of these values?

A. Principally the actual sales.

18 Q. Take for example the county of Randolph. How many sales do you know to have been made about the first of April, 1891, in the county of Randolph?

A. I do not take it right at that time; I take it for a stated time before and after.

19 Q. How many sales do you know to have been made in Randolph county since the first of April, 1891?

A. I do not remember; I cannot state the number.

20 Q. Then, in getting at the value of the land in Randolph county, you have not based that on any sales since the first of April, 1891?

A. Yes, sir.

21 Q. Well, on what sales?

A. The sales that I would find when I would go to examine securities.

22 Q. What sales were they?

A. I cannot name them by name.

23 Q. Do you know of any sale in Randolph county since the first of April, 1891?

A. I can tell you the location of them; I cannot give you the parties' names.

24 Q. You do know of sales?

A. Yes, sir.

157 25 Q. How do you know of those sales? From an examination of the records as to the consideration recited in the deeds or what the parties told you, or how do you know?

A. Both. I would first ascertain from the record if there had been any sales in the locality where I was going, and then I would see the parties who sold or bought, if possible.

26 Q. Now take the case of Randolph county. Can you tell me what sales you have known of since the first of April, 1891, or how many you have known of, if you cannot give the names?

A. Well, from the records there was a good many, and, from parties that I actually saw, there was probably not more than five or six.

27 Q. Have you examined the records as to how many sales there were in Randolph county since the 1st of April, 1891?

A. No, sir.

28 Q. Have you examined the records as to any sales in Randolph county since the first of April, 1891?

A. Yes, sir.

29 Q. How many?

A. Well, I ran it down—I presume I found 20 or 30 that I noticed a consideration for, and in five or six cases I saw the parties who sold and bought.

30 Q. Can you name any sale where you saw the parties or where you saw the record?

A. I can give you the location, but I cannot give you the names.

31 Q. What part of Randolph county was it?

A. It was north and west.

32 Q. How many pieces north and how many pieces west?

A. I should say there was 3 or 4 in each case.

33 Q. Take the county of Jasper. How many sales since the first of April, 1891, have you known of there?

158 A. From the records, over 27,000 acres.

34 Q. Since the first of April, 1891?

A. Yes, sir.

35 Q. What did they sell for per acre?

A. They run from $7 to $25. This was in the north part; in that very wet land.

36 Q. What have you been doing since the first of April, 1891?

A. I have made some sales and done special work generally.

37 Q. Special work generally. What kind of special work have you done generally?

A. I have examined securities for parties who wanted to make loans as individuals. I have made sales for parties, and I have acted as purchaser for other parties.

38 Q. Are you in the real-estate business now?

A. Only in a special way. I have not worked at it constantly.

39 Q. Have you been in the employ of any railroad company here since the first of April, 1891?

A. No, sir.

40 Q. For any purpose?

A. No, sir.

41 Q. Made no investigations for any railroad company?

A. Not until I was subpœnaed in this case.

42 Q. When were you subpœnaed in this case?

A. Last Saturday.

43 Q. Before that time did you talk with anybody about it or have any notice or information that you should be prepared to be examined?

A. To be prepared for this examination?

44 Q. Yes, sir.

A. No, sir.

45 Q. That you would be a witness in the case?

A. That I might be a witness.

159 46 Q. When were you first notified that you might be a witness?

A. Well, I don't know.

47 Q. Give us your best impression about it—whether it was before or after or how long before last Saturday.

A. It would be some time this month.

48 Q. Some time during the month of June?

A. Yes, sir.

49 Q. Who spoke to you about it?

A. Judge Dye. He wanted to know what I knew about the value of property in the State of Indiana.

50 Q. How many sales have you knowledge of in Bartholomew county since the first of April, 1891?

A. I have examined the records there and saw quite a number, but I didn't go to see the parties.

51 Q. The records of how many sales did you examine down in Bartholomew county since the first of April, 1891?

A. Well, I sat in the abstractor's office and I presume there was 20 or 30.

52 Q. When was that?

A. That was in March.

53 Q. In March you were examining as to the sales that had been made since April?

A. Yes, sir.

54 Q. Are you right sure of that?

A. Yes, sir.

55 Q. Think a moment and see if you did—if you were down there in March.

A. I was there in March.

56 Q. You were down there in March and examined the sales since the first of April?

A. Previous.

57 Q. It was in March, 1892?

A. Yes, sir.

160 58 Q. You went down there and went through the preceding 11 months?

A. Yes, sir; it was only in the special localities where I had business.

59 Q. What called you to go down to Bartholomew county in March?

A. I had applications for loans.

60 Q. For whom?

A. For the Northeastern.

61 Q. And what part of the county was it?

A. They were in the southeast, southwest, north, and northwest.

62 Q. What is the land in the northwest part of the county worth?

A. Do you mean in the haw patch?

63 Q. I mean in the northwest part of the county.

A. Some of it is not worth much.

64 Q. What is property worth in the northwest part of the county?

A. Some of it is not worth much of anything.

65 Q. Is not most of it not worth much of anything?

A. There is some of it there that is very poor.

66 Q. Is not the most of it very poor?

A. Yes, sir; in the northwest.

67 Q. That is over in the neighborhood of the Brown county hills?

A. Yes, sir.

68 Q. Broken and comparatively of little value?

A. The valleys are good.

69 Q. There are not very many valleys there?

A. They are very good, what there is of them.

70 Q. When were you up examining in Elkhart county?

A. During the year 1891 several times.

71 Q. How many sales did you investigate there?

161 A. Oh, 20 or 30.

72 Q. Did you talk with anybody about the values of real estate independent of the sales?

A. Yes, sir.

73 Q. Find any difference of opinion up in Elkhart county as to the value of real estate?

A. Yes, sir.

74 Q. Some of the citizens, with apparently the same means of observation, thought it was worth a good deal more than other citizens with the same observation thought it was worth, didn't they?

Mr. DYE: I interpose this objection to that question: that it is not cross-examination and not proper or material or relevant testimony what somebody else thought. We have put him on the stand to prove what nobody thought.

The court sustained the objection.

75 Q. Did you ever converse with anybody in regard to the values of real estate in these various counties?

A. Yes, sir.

76 Q. For what purpose did you converse with them?

Mr. DYE: We object to that as not cross-examination and not relevant testimony.

Mr. KETCHAM: We want to show that he is mistaken in stating that he bases his value upon these facts alone.

The court overruled the objection; to which ruling the plaintiff at the time excepted.

77 Q. For what purpose did you converse with people on the subject of values in the different counties through the

162 State?

Counsel for plaintiff objected to the question for the reasons above stated. The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. To ascertain their ideas of the value.

78 Q. And what did you want to ascertain their ideas about values for?

Mr. DYE: I object to that as being wholly irrelevant and incompetent and not cross-examination. It is not material here what he wanted to do when he was talking with people a year ago or yesterday, unless it has something to do with this case and this cross-examination.

The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. To ascertain what the value of the securities was that I was examining.

79 Q. Then, in addition to the investigation of the records and the conversations that you had with parties who had bought or sold real estate, you talked with other parties in order to find out what their views about the value of real estate were to assist you in determining those values, did you not?

A. Yes, sir; parties who had property for sale.

80 Q. Did you ever talk with anybody in regard to the subject of real-estate values who didn't have it for sale?

A. If they were prospective purchasers.

81 Q. Didn't you inquire of people who had property up there, owned property, whether they were wanting to purchase or whether they were wanting to sell?

A. I didn't care much for their opinion.

82 Q. You did talk to them, didn't you?

A. Occasionally.

163 83 Q. Now, among the people you talked with reference to values in various localities didn't you find a very wide difference of opinion?

A. No, sir.

84 Q. You found they were all the same, did you?

A. No, sir.

85 Q. What did you find then?

A. I did not find any very wide difference.

86 Q. What do you call a wide difference?

A. Well, they would rarely ever vary over $5 an acre.

87 Q. You say that in your investigation in talking with people as to values in different localities that you didn't find any variance rarely over $5 an acre?

A. That I talked to, for which I was examining.

88 Q. I understood you to say that frequently you went to the records to find out about sales, and then, after you had done so, you would go to the parties who had either made or received the deeds?

A. Yes, sir; if I could find them.

89 Q. Having ascertained from the records what the property sold for, why did you go to the parties themselves?

A. Sometimes deeds are made to correct titles and sometimes it is trade, and I wanted to know whether it was the actual valuation or whether it was trade value.

90 Q. Sometimes anything else in your experience?

A. Yes, sir.

91 Q. What was it something else, in your opinion?

A. Everything that would come up in law.

92 Q. Sometimes the considerations recited in the deed differed from the actual consideration?

A. Yes, sir.

93 Q. Was that one of the reasons why you went to inquire of the parties where you could?

164 A. Yes, sir.

94 Q. Because you had found within your experience that the recitation of the consideration in the deed did not always say what the actual consideration was?

A. It most always does where it is an actual sale.

95 Q. Most of the sales that you have been familiar with, were they cash sales or time sales?

A. Both.

96 Q. Most of them were both, were they?

A. Yes, sir; part cash and part time.

97 Q. Which constituted the greater number, the cash sales or the time sales?

A. Part cash and part time.

98 Q. Very largely the greater number, don't they?

A. Yes, sir.

99 Q. Where real estate is sold for all cash it usually sells for materially less than where it is sold for part cash and part time?

A. I cannot say that.

100 Q. Do you say that it is not so?

A. I do not think it is; where there is a purchase-money mortgage given for the balance of the purchase-money.

101 Q. Now, I will ask you if it is not true that, as a rule, in the various counties where you examined the sales that it was the best lands that were being transferred, passing from hand to hand, and not the poorest?

A. No, sor; in this case in Jasper county it was the very poorest.

102 Q. Now, I will ask you to take Bartholomew county, for instance—those western townships, the western edge of the county, among the hills—do you know of any transfers of any lands in those townships?

A. Yes, sir.

165 103 Q. When did you know of any being made?

A. I saw them at this visit I spoke of.

104 Q. Up among the hills there?

A. Yes, sir.

105 Q. What did they sell for?

A. About $20 an acre.

106 Q. Up among the hills?

A. Yes, sir.

107 Q. Who sold the land up among the hills for $20 an acre in Bartholomew county?

A. I cannot remember their names; I am very forgetful of names.

108 Q. How many pieces, how many different sales, how many acres?

A. Well, there was between three-fourths of a section and a section.

109 Q. One sale?

A. No, sir.

110 Q. How many different sales?

A. There were 3 or 4 sales made; they were during 1891.

111 Q. Do you know anything about the quality of the land; did you go to look at the land, whether it was land in the valleys, on the hill top of hill sides?

A. I had seen the land before that.

112 Q. Was it land on the hill top or hill side or in the valleys, or both?

A. Both.

113 Q. Which was it principally?

A. Side hill.

114 Q. What township was it in?

A. If you have got a map I can show you where it is.

115 Q. Do you know what township it was in?

A. I cannot recall it.

166 116 Q. You don't know the name?

A. No, sir; we run our townships by numbers and not by names. We do not remember the names. Our descriptions are by numbers.

117 Q. Now take the county of Howard. What do you say Howard county was worth?

A. Nearly $50 an acre.

118 Q. Do you know of any land being sold in Howard county in the last year for $50 an acre in cash?

A. Yes, sir.

119 Q. When was it?

A. Cash and time.

120 Q. All cash?

A. I cannot say whether—I heard of some cases where it was cash and time. I don't know whether in all cases there was any cash paid down for the whole of it or not.

121 Q. Do you know of a single sale in Howard county in the last two years where farm land has been sold for $50 an acre all cash?

A. I cannot swear whether it was all cash or not. Parties bought land in localities where I had been and sold there, and their statements were what they received for the lands they sold.

122 Q. But have you of your own knowledge — upon information obtained from anybody else a knowledge of any farm lands sold in Howard county within the last two years for $50 an acre in cash?

A. I cannot say that it was all cash.

123 Q. Have you any information of a sale for cash, either in Howard or any other of these counties that you have named, of farming land where the consideration, as you knew from your own knowledge or from information, was entirely of cash?

167 A. No, sir; I cannot say that they were all cash, any of them.

124 Q. So that you have no recollection of a sale of any farming land within the State of Indiana within the last two years where the consideration was, to your knowledge or upon your information obtained at the time, entirely in cash?

A. Not of my personal knowledge. In speaking of sales, part cash and part time, the public generally calls it a cash sale, and it has been stated to me as cash sales. But on investigation most of those cases was part cash and the balance purchase-money mortgage or the purchaser assumed the mortgage then on the property.

125 Q. A cash sale where it is usually come to you is distinguished simply from trade?

A. Where it is a *bona fide* trade.

126 Q. Where it has been a sale they call it a cash sale, and where it was trade then it was just spoken of as a sale?

A. Yes, sir.

127 Q. So that, if I understand you right, you know of no instance in the State of Indiana, in any of these counties you have named, in the last two years, where there has been a sale, that, to your knowledge or upon information that was satisfactory to your mind, the consideration was all cash money?

A. No, sir.

Re-examination.

Questions by JOHN T. DYE, Esq.:

128 Q. You said something about keeping the run of these townships by numbers in answer to Mr. Ketcham. Will you explain how that was where you kept the run of them by numbers?

168 A. In the application it would say such a number for town, such a range, and such a section, and such county.

129 Q. You answered that there had been but four foreclosures upon loans made by the Northwestern in this State in ten years. Did you mean only four foreclosures or four foreclosures of property where you had negotiated loans?

A. Upon loans made within the last ten years.

130 Q. You told me that there had been only four in the State of Indiana.

A. By this company.

131 Q. Well, about how many loans has it made in the State of Indiana in the course, say, of the last ten years?

A. I don't know; that would be corporation business.

132 Q. Can you give any idea of the amount of money that has been loaned by that company or kept loaned by that company in this State during that time?

A. I think we do as large business as any other of the companies doing business in this State.

133 Q. Did they or not do a large business?

A. Yes, sir.

134 Q. Did they have a small or large aggregate number of loans in this State?

A. The aggregate number would not be as great as it would be with other companies because they made no loan for less than $1,000; from that up to $100,000.

135 Q. Was the number of loans great or small with reference to other companies?

A. Well, I would not consider it large in numbers—not as large as many other companies who make smaller loans—but as to amounts I think they run equal to any company in the State.

136 Q. State whether that business is scattered over the State or located in any particular part of the State.

169 A. In the northern and central portions mostly.

137 Q. Were these loans made—state whether the business of your company has been largely confined to loans upon farm lands?

A. Yes, sir.

By Mr. KETCHAM:

138 Q. Is there any limitation to the value or the appraised value or ascertained value made by the Northwestern Mutual on its loans, whether one-half or one-fourth or 60 % or 70 %, or do they loan just as the agent recommends?

A. No, sir; they run from 35 to 45 %.

139 Q. The outside limit is 45 %?

A. They do not intend to go beyond that; no, sir.

140 Q. Is that 45 % of the value of the land exclusive of the improvements on it or the value of the land including the improvements?

A. Including the improvements.

And further the witness saith not.

170 H. P. TAUSSIG, a witness called for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. State your name.

A. H. P. Taussig.

2 Q. Where do you live?

A. St. Louis.

3 Q. How long have you lived in St. Louis?

A. Born and raised there, 38 years.

4 Q. How old are you?

A. Thirty-eight.

5 Q. What is your business?

A. Civil engineer.

6 Q. How long have you been a civil engineer?

A. Nineteen years.

7 Q. And have you been engaged practically as a civil engineer during that time?

A. All this time.

8 Q. What have been your special engagements or employments in that business?

A. In charge of the terminals of the St. Louis bridge and Missouri Pacific road and one year up in Colorado on the Santa Fé.

9 Q. How long have you had charge of the Missouri Pacific?

A. Since 1884.

10 Q. How long have you had charge of the St. Louis bridge terminals?

A. Since 1879—that is, as chief engineer. I have been with them since 1874 or 1873.

11 Q. Have you had any experience in the matter of the cost of construction and materials of railroad track and the values
171 of railroad track?

A. Yes, sir; both as an engineer and contractor.

12 Q. I will ask you if you have recently made any inspection of the lines owned, leased, and operated by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company in the State of Indiana.

A. Yes, sir.

13 Q. At whose request did you make that inspection?

A. Mr. Kittridge, chief engineer of the Big Four.

14 Q. I will ask you what sort of inspection it was as to thoroughness or as to being a superficial inspection.

A. We went thoroughly over the entire line by daylight and took notes of all the improvements and bridges and culverts and the general grade, so that we could approximate the quantities and the cost of the work.

15 Q. When was that done?

A. I think we left Cincinnati on Wednesday morning.

16 Q. Last week?

A. Yes, sir.

17 Q. Now, did you go over the Cincinnati, Lafayette & Chicago railway from Lawrenceburg to Lafayette—I mean the Cincinnati, Lafayette & Chicago from Templeton to the Illinois State line?

A. I am not familiar with these divisions without referring to notes.

18 Q. Did you make any notes when you were going over the lines?

A. Yes, sir.

19 Q. You can refer to your notes unless the gentlemen make some objection to it.

A. What did you call that division?

20 Q. The C., L. & C., 23.75 miles from Templeton, Indiana, to the State line, this side of Sheldon. State if you went over
172 that; that is what I ask you now.

A. Yes, sir; I went over it.

21 Q. Did you make a careful examination of the property?

A. We did.

22 Q. With a view to ascertaining what the property was worth?

A. Yes, sir.

23 Q. Had you been in any way familiar with that property before that time?

A. No, sir; I had never been over it by daylight until this time.

24 Q. What did you inspect and examine as you went over it?

A. Examined as to the grade, track, ballast, ties, masonry, bridges, whether of wood or iron; in fact, took in everything so far as the main line proper was concerned.

25 Q. Did you embrace the right of way in the main line?

A. Yes, sir.

26 Q. When you examined the main line, including the right of way?

A. Yes, sir.

27 Q. And excluding second tracks and side tracks?

A. Second track, side track, and improvements.

28 Q. That is, structures on the right of way?

A. Yes, sir. I took some memoranda on that, but not enough to compile or fix the value.

29 Q. You may state how accurately and carefully this work was done.

A. Well, we tried to jot down everything we could see, and I think we did about as carefully as one could, considering the mileage to go over.

30 Q. If you made any estimates as to the cost or as to the value of materials and cost of construction of that line, 23.75 miles.

A. Yes, sir.

173 31 Q. Now, I ask you as an expert, having made this examination of the property between Templeton and the Illinois line of 23.75 miles of the Cincinnati, La Fayette & Chicago railroad, what was the fair cash value per mile of the main track, including the right of way of that road?

Mr. SMITH: May the court please, unless Mr. Dye will say to the court that he intends to prove fraud on the part of the State board of tax commissioners in fixing these values, this evidence, at any stage of the case, would be incompetent. The fact that the values fixed by the State board were too high is no reason for granting an injunction or assailing the legality of the values fixed; but if the values were fixed too high purposely, fraudulently, on the part of the board for the purpose of increasing the values of this road, in that way then, perhaps, they might be permitted to go into that; but unless they state to the court now that they intend to establish the question of fraud here, then this evidence, in my judgment, is incompetent. I have not had time to consult with the gentlemen around me here; perhaps Mr. Ketcham had better state his view of the matter; that is my view of it. My objection is conditional upon the plaintiff's stating to the court that it intends to establish a question of fraud. I do not think they have any fraud alleged in the complaint, but it certainly is not admissible unless they do establish the question of fraud here. Of course there are epithets used in the complaint—charges of fraudulent conduct—but there are no facts stated. I have always contended in this case that there is no statement or allegation of fact constituting fraud charged here against these tax commissioners and I cling to that position

174 yet, not desiring to open up any discussion in the matter, and admitting now, for the argument's sake, that fraud is duly

and fairly charged in their bill, they must state to this court, before this evidence is competent, that they expect to prove it. I object to the question unless they do.

Mr. DYE: If your honor please, the gentlemen object to this testimony unless we state that we expect to prove that this assessment was fraudulently made by these commissioners. This testimony is material under several allegations contained in the 4th paragraph of the complaint. It is material also under the fifth paragraph of the complaint and under paragraph or specification 4*a* of the complaint. This testimony is material and important to sustain the averment in the fourth paragraph that this board intentionally, in pursuance of a rule adopted by it, discriminated against railroads that were parts of or leased to or operated by systems or consolidations or companies partly in this State and partly in other States and in favor of railroads wholly in this State by loading up and saddling upon these interstate railroads or railroads operated by them values out of the State and by considering stocks and bonds and values out of the State in assessing interstate railroads while they considered no values out of the State in assessing State railroads. We expect, may it please your honor, to prove these allegations. This testimony is also admissible under the allegations of the complaint that this board discriminated in favor of the owners of farming lands in this State in pursuance of a rule adopted by them, as set forth on page 29 of the complaint. We cannot show
any discrimination, even though we can prove the value
175 of farm lands, unless we can prove the value of the railroads. We say there it was done knowingly and designedly, and we expect to prove that it was done knowingly and designedly. We expect to prove that they absolutely decreased the assessment of the county boards upon land when they knew that the original assessment was less than the cash value. This evidence is also admissible upon the ground upon which Mr. Smith asks me to make a statement—that we expect to prove that this assessment against these railroads was made fraudulently. Now, whether we shall be able to prove that this assessment was made fraudulently depends upon whether the evidence which we have and which we expect to introduce will be admitted by the court. We have charged in this complaint that this assessment was made with the intention of purposely and knowingly placing a burden upon railroad companies which does not rest upon other property in the State. That, we understand, is an allegation of fraud; that it was not the fair and honest judgment of the men who constituted this board nor of this board upon the evidence before it and upon the facts before it and upon the returns with the information they had. Now, we expect to prove that; we are trying to prove that. We are going to show such an inequality in value between the amounts which they fixed upon this property and the real value of these properties as will upon its face show that it cannot be a fair, honest exercise of discretion and judgment upon the facts which were before them. We have set that out in this declaration, which is sworn to, and we expect to prove it; we are trying to prove it now. We offer this evi-

dence as tending to show that this board in making that assessment discriminated against railroad companies having systems extending into more than one State by considering—that
176 is, taking into account and estimating, in the value which they placed upon the leased and operated lines and divisions of such railroads, values out of the State; that they discriminated as to real estate, as I have indicated to your honor, in favor of farming lands, and that they did put a value upon railroads which was not based upon the evidence nor upon any information which was before that board and which upon its face shows that it was not a fair and honest judgment of the board upon any evidence, which upon its face shows that it is not the exercise of judicial discretion; that there is no exercise of discretion in it. We expect to show that this action of the board was arbitrary, wilful, intentional. Now, I hate to use these words because the gentlemen say I am using epithets. I do not use them as epithets, but that is what we have undertaken to prove and to show in this case.

Mr. SMITH: By what witness will you prove it?

Mr. DYE: Well, we offer—we have not indicated yet the pages here in this book, may it please your honor—we offer these certificates of the board itself; they are in evidence. We will offer the returns made by this railroad company. It is in evidence—it is conceded—that this is a consolidated company; that it is operated in three States. The report of the State board of tax commissioners contains the following:

"The State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such
177 railroads was unanimously agreed upon and ordered to be spread upon the record, to stand as the assessment of railroad property."

The word "railroad" is a more comprehensive term than railroad track and rolling stock; it embraces elements and values other than railroad track and rolling stock. This board did agree on the value of, not railroad track and rolling stock, but upon the value of railroads, which included other things besides railroad track and rolling stock.

And, further, if your honor will turn to page 213 of the proceedings of the tax board, they say:

"Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth."

In that certificate, after making a liberal allowance for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads. Now, assuming for the present, as this is my statement of my position, so that your honor and the gentlemen may understand it, that railroads and parts of roads embrace values and elements that are not embraced in the statutory list of properties which this board can assess, rail-

road track and rolling stock, and that it does embrace more than railroad track and rolling stock, it embraces stocks and securities, according to the highest authority in the English language upon that subject, and by the accepted usage of the term. We claim here and now that we have made out a *prima facie* case, under the rules, against us, and shown that property outside of the jurisdiction of the State has been considered, has been taken into account, in
178 this assessment. We do not expect your honor to decide this now. I am stating it fully so that the gentlemen may have the benefit of it, and at the request of Mr. Smith. We offer this evidence here for all the grounds stated to show fraud, to show the inequality and the discrimination, and to prove these various allegations to which I have alluded.

The COURT: It is now noon. I will decide this point on resuming at 2 o'clock.

Whereupon the court took recess until two o'clock p. m.

179 2 O'CLOCK P. M.

The court met pursuant to adjournment.

Present: The same as before recess.

The COURT: The State board of tax commissioners, the members of it, are required to take an oath to faithfully perform their duties and discharge their duties as the board of tax commissioners, and they have power to subpœna witnesses, to examine witnesses, to administer oaths, and they have access to all books and papers if they desire it to aid them in coming to a conclusion, and they have power to assess railroad track and rolling stock and to equalize the values of real estate. They have made an assessment of railroad track and rolling stock. They have jurisdiction. That assessment will stand unless it is vitiated by fraud. The question whether or not they have jurisdiction is not before the court on this objection. It was conceded, it has been conceded by all parties, that this court cannot hear evidence to determine whether or not they have made a right assessment. This court cannot determine that. It is not for this court to do that, nor is it proper for the court to hear evidence to determine whether or not they have made an assessment such as some one else would make, because, as tax commissioners, they have jurisdiction and have power under the law to make this assessment according to their best knowledge and judgment.

Now, it is claimed by Mr. Dye that a *prima facie* case has been made out. He is seeking to introduce the testimony of Mr. Taussig as to the value of the railroad track of certain lines of this system, and, of course, he cannot introduce this testimony on
180 the lines that I have indicated, but he claims that a *prima facie* case has been made out by the introduction of this record, as I understand. He relies particularly, although he stated in making his statement that he did not wish to be precluded from arguing it more fully to the court, but he relied especially or to a considerable extent upon the meaning to be attached to the word "considered" in the second certificate, made by the board. The

question is whether or not the *prima facie* case has been made out. I suppose if it has been made out this testimony would be competent, cumulative, but there must be a *prima facie* case made out according to Mr. Dye's theory. It seems to me in making that statement he tacitly acknowledged the point, made by counsel for the State, that unless he followed this up as they were viewing it that no *prima facie* case had been made out; that unless he followed this evidence up with evidence of fraud on the part of the board it would not be competent to introduce this evidence. I judge that he recognizes that that is the one proper position to take. It seems to the court from the illustrations that were made, and they seem pertinent, that unless either fraud has been shown or is to be shown this testimony would not be competent. He claims that *prima facie* fraud has been shown, as I understand it. I cannot, considering both of these certificates and considering the whole record, see that there is a *prima facie* case of fraud made against the board. Fraud is something that cannot be presumed. It must be alleged and it must be proven. I do not think that the testimony now before the court is sufficient to make a *prima facie* case of fraud, and I think the rule ought to be that unless this evidence is to be followed by evidence of fraud on the part of the commissioners in mak-
181 ing this assessment that it ought to be excluded. I will therefore sustain the defendant's objection.

To which ruling of the court the plaintiff at the time excepted.

32 Q. Mr. Taussig, were you ever in the employ of the C., C., C. and St. L. Railway Company?
A. No, sir.

Mr. DYE: I now offer to prove, may the court please, by Mr. Taussig, for the purpose of sustaining the fourth paragraph of this complaint, and especially the allegations on page 29, as to discrimination in favor of other real estate than railroad property and against railroad property, and as to allegations on page 32, with reference to the discriminations against railroads in favor of other property, and also under the allegations on page 30, that the board took into consideration and assessed and included in its return to the auditor property and values in the States of Ohio and Illinois without the jurisdiction of the laws of Indiana and set them down as the values of the railroad properties of the plaintiff in this State, and for the further purpose of showing in itself fraud in the making of this assessment—as proof of fraud, by reason of the grossly exorbitant assessment placed upon this property, which in itself is fraudulent, I offer to prove that the fair cash market value of the main line—main track—of the Cincinnati, La Fayette and Chicago railway, 23 and $\frac{75}{100}$ miles long, from Templeton, Indiana, to the Illinois State line, being a part of the railroad extending from Tem-
pleton, Indiana, to Kankakee, Illinois, where it intersects the
182 Illinois Central, is $6,700 per mile. We also say to your honor that this property has not changed its value; that we will offer proof of that kind, that it has not changed its value from

April 1st, 1890, up to date, and we offer this evidence upon that statement. I suppose there will be no objection to it on that ground—that is, that the testimony of the witness relates to the present time or last week instead of April 1st, 1890. If there is any objection of that sort, we might put in a witness on that subject first; but we say to the court we will prove that the value has not changed from the 1st of April, 1890, *to up* date.

The COURT: I suppose anything in these offers that is not covered by the question, if the question is not broad enough, that this court has nothing to do with it.

Mr. DYE: If there is any objection to the proof of the value of this track last week, I want to submit to your honor the statement and we will show that its value last week is the same that it was a year ago. We want to make this evidence relevant as to the time. I understand they are making no objection upon that point.

The COURT: The fact that this examination was made last week don't cut any figure as to the competency of the evidence.

Mr. DYE: They are making objection to this testimony because under no circumstances would it be competent and not for technical reasons, as I understand it.

The COURT: The court understands by their silence under the circumstances they are assenting to that proposition. The court sustains the objection to the testimony you offer.

183 To which ruling of the court the plaintiff, at the time excepted.

33 Q. You have stated that you made a careful examination, also, of the Indianapolis division?

A. Yes, sir.

34 Q. Extending from Indianapolis to the Ohio State line—from the Union railway tracks?

A. Yes, sir.

35 Q. 83 and $\frac{84}{100}$ miles?

A. Yes, sir.

36 Q. I now ask you what was the fair cash value of the main track of the Indianapolis division, extending from Indianapolis to the Ohio State line, being part of the railroad track extending from Indianapolis to Cleveland, Ohio, used as a railroad track on the 1st day of April, 1891.

Mr. KETCHAM: We object to that, may the court please, for the reason that the evidence is irrelevant and immaterial, unless the plaintiff shall show that the State board of tax commissioners in making their assessment acted fraudulently, and because of the fact that the evidence would be immaterial unless that fact were shown. We ask the court in its discretion to direct that the evidence in support of the fraudulent acts claimed be first submitted before the other evidence, the materiality of which depends upon such fraudulent conduct.

Mr. DYE: The plaintiff, may the court please, stands upon its right to offer its evidence in the order in which it sees fit, and in-

sists that the evidence now offered is in itself proof of fraud. It cannot be that a court can hold, where fraud is in issue, that
184 no evi- to prove fraud shall be introduced until after fraud has been proved, and, further, this evidence is not upon the ground of fraud alone, but it is offered to show an intentional and unjust discrimination against plaintiff's property and property of the class to which plaintiff belongs. It would be competent for this purpose if no fraud was proved. It is also offered as evidence to show that the board exceeded its jurisdiction in assessing values outside of the State of Indiana and tends to prove the allegations of that portion of the complaint by showing that the real value of plaintiff's property which the board assessed is far less than the value which the board put upon it by considering and taking into account, in forming the basis of the estimate of value, values and property outside of the State.

The court sustained the defendant's objection to the question; to which ruling the plaintiff at the time excepted.

Mr. DYE: I now offer to prove by this witness that the main track of the Indianapolis division of the Cleveland, Cincinnati, Chicago and St. Louis railway, 83 and $\frac{84}{100}$ miles, from the Indianapolis Union railway track to the Ohio State line, was worth on the 1st day of April, 1891, $8,096.00 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff, by counsel, at the time excepted.

37 Q. Now, Mr. Taussig, I will ask you, as you have already stated you made an examination of the St. Louis division,
185 what the main track of the St. Louis division of the plaintiff's road from the Indianapolis Union railway tracks to Terre Haute, Indiana, was worth; what was its cash market value as a part of the railroad leading from Indianapolis to St. Louis, considering its location and the conditions affecting its value, all the conditions affecting its value, on the 1st day of April, 1891.

To this question the defendant objected upon the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove by this witness, may the court please, that on the 1st day of April, 1891, the St. Louis division of the plaintiff's road, 80 and $\frac{47}{100}$ miles long, from Terre Haute, Indiana, to the Union railway tracks, Indianapolis, Indiana, taking into account and into consideration that it was part of a railroad track from St. Louis to Indianapolis and all the conditions affecting its market value, was worth $10,461 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

38 Q. I will ask you, Mr. Taussig, what was the fair market value,

considering its location and all the conditions affecting the value of the main track, of the Chicago division of the C., C., C. & St. L. Railway Company, plaintiff's road, extending from La Fayette, Indiana, to the Ohio State line near Lawrenceburg, Indiana,
186 taking it as a part of a railroad from Cincinnati to La Fayette, having connections at both ends, on the 1st day of April, 1891.

To this question the defendant objected on the grounds and for the reason heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I now offer to prove, may the court please, that the main track of the Chicago division, taking into consideration all the conditions affecting its market value, 158.81 miles long, from La Fayette, Indiana, to the Ohio State line, near Lawrenceburg, as a part of the railroad, extending from Cincinnati and La Fayette, with its connections, was worth, on the 1st day of April, 1891, $7,256 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

39 Q. I will ask you if you made an examination of the Columbus, Hope and Greensburg railroad—if that was included in your inspection.

A. Yes, sir.

40 Q. Extending from Columbus, Indiana, to Greensburg, Indiana?

A. Yes, sir.

41 Q. 24 and $\frac{28}{100}$ miles?

A. Yes, sir.

42 Q. I will ask you what was the fair cash market value
187 per mile on the 1st day of April, 1891, of the main track of the Columbus, Hope and Greensburg railroad, including right of way and main track, with bridges, openings, and everything except buildings on the right of way and side track, taking into consideration the termini of the road, the condition of the road, and all other circumstances which would affect its market value.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We now offer to prove that the main track of that road, taking into consideration all the conditions that would affect its value on the 1st day of April, 1891, was worth $5,776 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

43 Q. The Vernon, Greensburgh and Rushville railroad was also embraced in that inspection?

A. Yes, sir.

44 Q. I will ask you the same question as to the fair cash value of the Vernon, Greensburg and Rushville railroad as a railroad extending from Vernon to Rushville, with its connections and in its actual condition, considering all the circumstances which would affect its market value on the 1st day of April, 1891.

188 To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove, may the court please, that the main track of the Vernon, Greensburg and Rushville railroad, on the 1st day of April, 1891, taking into consideration its termini and connections and all questions that would affect its market value, was worth $4,570 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

45 Q. Now, I want to ask you as to second main track. I ask you to state what the side track of the Cincinnati—what the 4 and $\frac{22}{100}$ miles of the side track of the Cincinnati, La Fayette and Chicago railway from Templeton to the Illinois State line was worth per mile on April 1st, 1891—its fair cash value in the market.

To this question the defendant objected on the grounds and for the reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I offer to prove that the fair cash value of that side track was $2,625 per mile.

The court sustained the defendant's objected to the testimony offered; to which ruling the plaintiff at the time excepted.

189 46 Q. Now, as to the Indianapolis division. I ask you what was the fair cash value of the second main track, 2 and $\frac{44}{100}$ miles.

To this question the defendant objected on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove that the second main track of the Indianapolis division, 2 and $\frac{44}{100}$ miles, was worth only $4,000 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

47 Q. Now, how much was the side track, $39\frac{5}{100}$ miles, of the Indianapolis division worth on the 1st day of April, 1891?

To this question the defendant objected for the reasons and upon the grounds as heretofore stated. The court sustained the objection; to which ruling the plaintiff, by counsel, at the time excepted.

Mr. DYE: We offer to prove by this witness that the side track inquired about was worth $2,525.00 per mile on the 1st day of April, 1891.

The court sustained the objection as to the testimony offered; to which ruling the plaintiff at the time excepted.

48 Q. I ask you now what was the 31 and $\frac{8}{100}$ miles side
190 track of the St. Louis division worth on the 1st day of April, 1891?

To this question the defendant objected on the grounds and for the reason as heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove that the 31 and $\frac{8}{100}$ miles of side track of the St. Louis division was worth $2,625.00 per mile on the 1st of April, 1891.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

49 Q. What was the 59.82 miles of the side track of the Chicago division worth on the 1st day of April, 1891?

The defendant, by counsel, objected to this question on the grounds and for the reasons as heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that the side track of the Chicago division on the 1st day of April, 1891, was worth $2,625 per mile.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

50 Q. Now, I ask what was the total value of the property denominated railroad track of the Chicago division of the Cleveland,
191 Cincinnati, Chicago and St. Louis railway, 158.81 miles, from La Fayette to the Ohio State line, near Lawrenceburg, including the right of way, main track, second track, side track, and improvements on right of way, taking into consideration the termini, the condition of the road, and all considerations that would affect the value on the 1st day of April, 1891.

To this question the defendant objected on the ground and for the reasons as heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now we offer to prove by this witness that the total value of the 158 and $\frac{81}{100}$ miles of the railroad track of the Chicago

division, taking into consideration all questions that affect its value, was on the 1st day of April, 1891, $1,137,813.36.

The court sustained the defendant's objection to the testimony offered; to which ruling of the court the plaintiff at the time excepted.

And further the witness saith not.

192 Mr. DYE: We now offer in evidence the annual return of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company to the auditor of state for the year 1891, showing Schedule No. 1, property denominated railroad track, rolling stock, and improvements on right of way belonging to and controlled by the C., C., C. & St. L. Railway Company.

It includes the entire return made by the three C.'s & St. L. It does not include the return made by the Peoria & Eastern, because there is no assessment against the three C.'s & St. L. for the Peoria & Eastern, and that is a matter we may have to try in some other tribunal.

The said return was admitted in evidence, the same being in the words and figures following, to wit:

193 *Return of the C., C., C. & St. L. R'way*

194 Auditor's

(This blank to be filed with auditor

Annual Return of the C., C., C. & St. L. R'y Co. to the

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by companies, according to

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							Indianapolis @ $9,000
Randolph	211	82	8,867	3,935	21	86	196,812
Delaware	194	14	7,791	2,505	20	54	184,887
Madison	197	83	6,960	2,080	20	40	183,609
Hancock	67	73	1,782	280	6	99	62,982
Marion	125	35	12,704	58,470	14	05	126,477
	801	87	38,104	67,270	83	84	754,767
							St. Louis @ $6,000
Marion	97	89	979	515	8	69	52,110
Hendricks	240	46	2,405	2,880	19	93	119,592
Putnam	234	65	2,346	1,825	19	37	116,196
Parke	12	76	128	330	1	07	6,384
Clay	108	26	1,083	1,510	8	92	53,502
* Vigo	240	88	2,409	11,695	22	49	134,934
	934	90	9,350	18,755	80	47	482,718
							White Water @ $3,000
Wayne	-----	-----	-----	1,000	14	33	42,990
Fayette	-----	-----	-----	1,000	14	16	42,480
Franklin	-----	-----	-----	1,900	27	51	82,530
Dearborn	-----	-----	-----	450	6	25	18,750
				4,350	62	25	186,750
Totals in State—carried forward	-----	-----	-----	90,375	226	56	1,424,235

* The milage in Vigo county includes 8.10 miles of track belonging to the St. Louis, Alton & con

Co. to Auditor of State for the Year 1891.

form.

of state between April 1 and June 1.)

Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the C., C., C. & St. L R'y Co. on the 1st day of April, 1892, as required of railroad section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
divi	sion.								
----	----	@ $3,000	----	----	@ $2,000				
----	----	----	5	00	10,000				
----	----	----	4	75	9,500				
----	----	----	7	11	14,220				
----	----	----	1	47	2,940				
2	44	7,320	20	72	41,440				
2	44	7,320	39	05	78,100				
divi	sion.								
----	----	----	----	----	@ $1,500				
----	----	----	4	24	6,360				
----	----	----	2	72	4,080				
----	----	----	3	24	4,860				
----	----	----	3	49	8,725				
----	----	----	5	40	8,160				
----	----	----	11	99	17,980				
			31	08	50,105				
divi	sion.								
----	----	----	----	----	@ $1,000				
----	----	----	1	08	1,080				
----	----	----	1	27	1,270				
----	----	----	----	07	140				
----	----	----	----	14	280				
			2	56	2,770				
2	44	7,320	72	69	130,975				

Terre Haute R. R. not reported separately by that road, it being operated by this company under tract.

Counties.	Right of way and improvements thereon.						
	Acres.				Main.		
	No.	Hun.	Value, excluding improvements.	Value of buildings on right of way. (See Schedule No. 5.)	Miles.	Hun.	Value as listed to county.
Am'ts b'ght forward				90,375	226	56	1,424,235
195							Chicago @ $9,000
Dearborn				1,530	19	43	174,870
Ripley				2,245	9	75	87,750
Franklin				0000	3	36	30,240
Decatur				4,265	21	07	189,630
Shelby				2,000	22	84	205,560
Marion				7,050	29	43	264,870
Boone				1,740	28	90	260,100
Clinton				360	3	70	33,300
Tippecanoe				5,535	18	33	164,970
							Lawrence @ 4,000
Dearborn				1,510	2	91	11,640
				26,235	159	72	1,422,930
				$116,610	386	28	2,847,165
							Harrison @ $3,000
Dearborn				None		81	2,430
Totals in State				116,610	387	09	2,849,595

R'way Co., &c.—Continued.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
2	44	7,320	72	69	130,975				
di vision.									
----	----	----------	----	----	@ $2,000				
----	----	----------	3	11	6,220				
----	----	----------	2	78	5,560				
----	----	----------	----	07	140				
----	----	----------	13	27	26,540				
----	----	----------	5	28	10,560				
----	----	----------	22	13	44,260				
----	----	----------	5	21	10,420				
----	----	----------	1	11	2,220				
----	----	----------	6	86	13,720				
b u r g br anch.									
----	----	----------	----	----	$2,000				
----	----	----------	3	71	7,420				
			63	53	127,060				
2	44	7,320	136	22	258,035				
B r a nch	R. R.								
----	----	----------	----	----	@ $2,000				
----	----	----------	1	03	2,060				
2	44	7,320	137	25	260,095				

196 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part, by the — on the 1st day of April, 1892, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	89	3,300	293,700
Locomotives, second class		187	2,300	430,100
third class		56	1,300	72,800
Passenger cars, first class		105	1,200	126,000
Passenger cars, second class		55	800	44,000
Pay cars		2	1,000	2,000
Officers' cars		7	1,100	7,700
Sleeping cars				
Dining and drawing room cars		10	1,500	15,000
Postal cars				
Combination cars		30	800	24,000
Baggage, mail, or express cars		178	475	37,050
Box cars		10,464	150	1,569,600
Stock cars		1,009	140	141,260
Coal cars		1,726	125	215,750
Platform cars		1,813	115	208,495
Wrecking and camp cars				
Ice and refrigerator cars		199	200	39,800
Fast-freight-line cars				
Caboose cars		143	200	28,600
Tank or oil cars				
Pile-driving cars		2	450	900
Push-cars		235	12	2,820
Hand cars		244	20	4,880
All other kinds of cars, prop'r rolling stock value per mile, $2,321.				
Total listed value of rolling stock				3,264,455

Length of main track on which said rolling stock is used in Indiana	546 miles, 41 hund.
Length of main track on which said rolling stock is used elsewhere (describe such roads below)	855 miles, 57 hund.
Total length of road	1,401 miles, 98 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.

N. B.—For points covered above see back of this sheet.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Wagner Palace Car Co.

Give name of express company doing business over your line. ——.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. M. E. Ingalls, Cincinnati, O.

Give name and address of secretary of your company. E. F. Osborn, Cincinnati, O.

Give name and address of gen'l manager or sup't of your company. Wm. M. Greene, Cincinnati, O.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Edwin A. Hill, R. E. ag't, Cincinnati, Ohio.

197 A number of the railroads operated by the Cleveland, Cincinnati, Chicago & St. Louis Railway Co. under leases and contracts retain their corporate existence, and therefore make separate tax reports, but own no rolling stock, the same being furnished by the C., C., C. & St. L. R'y, the operating company. The rolling-stock schedule on preceding page includes all rolling stock owned or controlled by the C., C., C. & St. L. R'y, except that belonging to the leased and operated lines which make separate reports of their own rolling stock, which lines are the following: The Cincinnati and Springfield railway, from Springfield, O., to Cincinnati, Ohio; the Cincinnati, Sandusky and Cleveland R. R., from Springfield, Ohio, to Sandusky, Ohio; the Columbus, Springfield and Cincinnati R'y, from Springfield, Ohio, to Columbus, Ohio; the Peoria and Eastern railway, from Peoria, Illinois, to Indianapolis, Ind.; the road from Indianapolis, Ind., to Springfield, Ohio, formerly part of the O., I. & W. R'y; the Dayton and Union R. R., from Union City, Ind., to Dayton, Ohio.

The following statement shows the combined mileage for the C., C., C. & St. L. R'y and that of the leased and controlled lines which own no rolling stock, and therefore make no separate report of same:

Name of road.	Ohio.	Indiana.	Illinois.	Total.
C., C., C. & St. L. R'y proper:				
Cin'ti, O., to La Fayette, Ind., inc. 2.91 m. Lawrenceburg br. in Inda.	20.56	159.72		180.28
Harrison, O., to Hagerstown, Ind.		62.25		62.25
Cleveland, O., to Columbus, Ohio	137.85			389.81
Delaware, O., to Springfield, Ohio	50 10			
Galion to Union City, Ind.	118.02			
Union City to Indianapolis		83.84		
Indianapolis, Ind., to Terre Haute, Ind.		72.37		72.37
Lines leased and operated using C., C., C. & St. L. rolling stock:				
Terre Haute to East St. Louis (4.29 m. on Alton br. in Ills.)		8.10	185.69	193.79
Danville, Ills, to Cairo, Ills. (inc. Vincennes branch in Ind.)		6.85	259.29	266.14
Cin'ti, La Fayette & Chi. R. R., Templeton, Ind., to Kankakee, Ills.		23.75	32.98	56.73
Vernon, Greensburg & Rushville R. R., Vernon, Ind., to Rushville, Ind.		44.54		44.54
Kankakee & Seneca R. R, Kankakee, Ills., to Seneca, Ills.			42.07	42.07
Fairland, Franklin & Martinsville R. R., Franklin, Ind., to Martinsville, Ind.		38.23		38.23
Col's, Hope & Greensburg R. R., Greensburg, Ind., to Columbus, Ind.		24.28		24.28
Harrison Branch R. R., Harrison, O., to Valley Junction, Ohio	7.01	.81		7.82
Cin'ti & S. Ohio River railway		3.69		3.69
Mt. Gilead Short line	2.00			2.00
	335.54	528.43	520.03	1,384.00
Milage used jointly by L., E. & W. R'y & C., C., C. & St. L. R'y between La Fayette and Templeton Junc., Ind.		17.98		17.98
	335.54	546.41	520.03	1,401.98

198 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. Railway Company on the 1st day of April, 1892, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,800 on Ind'p'l's & St. Louis div's & 3,000 on Chicago div.

State length of time road has been built. Ind'p'l's div., 37 yrs.; St. Louis div., 20 yrs.; Chicago div., 32 yrs.

State number miles of track laid with steel rail. Ind'p'l's div., all; St. Louis div., ——; Chicago div., ——.

State number miles of track laid with iron rail. Do., none.

State number miles of siding laid with steel rail. Do., all.

State number miles of siding laid with iron rail. Do., none.

State weight of iron and steel rail used in main track and sidings. 60, 67, & 65 lbs. per yard.

State kind of "joints" or "chairs" used. Angle splice-bars.

State proportion of ballast used on road: Rock, ——; gravel, ——; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the C., C., C. & St. L. Rail— Company on the 1st day of April, 1891, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$38,712,680 00
Number of shares	387,126.8
Amount of capital stock paid up	
Market value of stock per share	Do not know.
Actual value of stock per share	100

Indebtedness.

Amount of 1st-mortgage bonds		
Amount of 2d-mortgage bonds		
Amount of — mortgage bonds	$34,070,580	
Amount of — mortgage bonds		
Total indebtedness, not including current expense for operating road		3,186,553 65
Current expense for operating road		1,479,964 92
Total listed valuation of all tangible property in this State, exclusive of personal & rolling stock		3,233,620 00

Earnings.

Gross earnings of entire road, as shown by last official report of company	$12,384,779 80
Net earnings of entire road, as shown by last official report of company	1,482,977 36
Gross earnings of miles of road within this State, as shown by last official report	4,173,670 79
Net earnings of miles of road within this State, as shown by last official report	499,763 37
Average annual net earnings per mile over entire line, as shown by last official report	1,050 00
Average annual gross earnings per mile over entire line, as shown by last official report	9,000 00

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

199 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water Situated upon the "Right of Way"

County.	Township.	Descri Name of station.
☞ (Arrange counties in alphabetical order.)		
		Chicago
Boone	Centre	W. of Lebanon
	"	Lebanon
	"	"
	Eagle	Zionville
	"	"
	"	"
	Worth	Whitestown
	"	"
	Jefferson	Thorntown
	"	"
	"	"
Clinton	Perry	Colfax
	"	"
	"	"
Dearborn	Lawrenceburg	Lawb'g Jun.
	"	"
	York	Guilford
	"	"
	"	"
	"	"
	Jackson	Manchester
		Weisberg
Decatur	Washington	Greensburg
	"	
	"	
	"	
	"	
	Salt Creek	New Point
	"	"
	"	Doles
Ripley	Adams	Summans
	"	"
	"	"
	"	Boundary Line
	"	Spades
	"	Morris
	Langbury	Batesville

No. 5.

Tanks, Other Buildings, Belonging to the C., C., C. & St. L. Railway Company, of said Road in — County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
division.				
Water station		Frame		100
Depot		"		300
Tool-house		"		20
Depot		"		250
Water station		"		300
Tool-house		"		10
"		"		10
Depot		"		250
"		"		250
Water station		"		250
Tool-house		"		00
				1,740
½ of depot		"		250
Coal bins		"		100
Tool-house		"		10
				360
Depot		"		400
Water station		"		350
"		"		500
Depot		"		200
Engine shed		"		50
Tool-house		"		10
"		"		10
"		"		10
				1,530
Pass'r depot		Brick		800
F'ght		Frame		800
Eng. h'se & tool-h'se		Brick		2,000
Water station		Frame		200
Stock-pens		"		75
3 tool-houses		"		30
Depot		"		200
Tool-house		"		10
Water station		"		150
				4,265
Depot		"		200
Water station		"		350
Tool-house		"		10
Water station		"		50
Depot		"		75
"		"		200
"		"		1,000

Schedule No.

	County.	Township.	Descri Name of station.
		Langbury	Batesville
		"	"
200	Shelby	Addison	Shelbyville
		"	"
		"	"
		Noble	St. Paul
		"	"
		Liberty	Waldron
		"	"
		"	"
		Brandywine	Fairland
		"	"
		Moral	London
		"	"
		"	Brookfield
		Shelby	Prescott
	Tippecanoe	Fairfield	Lafay. J'c'n
		"	Lafayette
		"	"
		"	"
		"	"
		"	"
		Lauramie	Clark's Hill
		"	Stockwell
		"	"
		"	"
	Marion	Centre	Beltyard
		"	do.
		"	N. Ind'p'l's
		"	Ind'p'l's
		"	
		"	
		"	
		"	
		"	
		"	
		"	
		Franklin	Acton
		"	"
		"	Camp Ground
		Pike	Augusta
			Beech Grove

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Water station		Frame		350
Tool-house		"		10
				2,245
Carried forward				10,140
Amount brought forward				10,140
Pass'r depot		Brick		600
F'ght "		Frame		300
Tool-house		"		10
Depot		"		200
Tool-house		"		10
"		"		10
Depot		"		200
Water station		"		150
Depot		"		200
Tool-house		"		10
Depot		"		100
Tool-house		"		10
Water sta.		"		100
Depot		"		100
				2,000
½ hotel & depot		Brick		1,500
Depot		"		1,500
Eng. h'se & turn-table		"		1,500
Oil-house		Frame		15
Water station		"		300
Tool-house		"		10
½ dep't & interlocking cabin		"		150
Water station		"		150
Tool-house		"		10
Depot		"		400
				5,535
Interlocking cabin		Frame		100
Office		"		200
Depot		"		50
F'ght depot		Brick		3,000
Machine shops		"		2,000
Water sta. at shops		Frame		200
Office at "		"		200
Supply of at "		"		50
2 tool-houses		"		20
N St. depot		Brick		800
" tool-house		Wood		10
Depot		"		200
Tool-house		"		10
Depot		"		100
"		"		10
"		"		100
				7.050
Total on Chicago division				24,725

Schedule No.

County.	Township.	Descri Name of station.
201		
		Indianapolis
Delaware	Liberty	Selina
	Center	Muncie
	Mt. Pleasant	Yorktown
	Selina	Daleville
Hancock	Warren	Fortville
Madison	Union	Chesterfield
	Anderson	Anderson
	Fall Creek	Pendleton
Marion	Lawrence	Oakland
		Lawrence
	Warren	Brightwood

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Amount brought forward				$24,725
division.				
Pass'r & f'ght house	30 x 100 x 16	Wood	1862	450
Pass'r-house	20 x 45 x 16	"	1860	480
Water station				600
Tool-sheds (2)		"	1865	60
F'ght-house, part	20 x 100 x 20	"	1861	300
Engine-house	20 x 60 x 18	"	1881	100
Baggage-room	14 x 24 x 12	"	1877	75
Watch-house	6 x 8 x 8	"	1887	20
Pass'r & f'ght house	20 x 56 x 16	"	1874	250
Hand-car house	10 x 16 x 8	"	"	30
Section-house	18 x 28 x 14	"	"	50
Pass'r & f'ght house	14 x 20 x 12	"	1881	60
Hand-car h'se	12 x 18 x 8	"	1877	30
				2,505
Water station				200
Tool-shed	16 x 18 x 19			30
Section-house	18 x 26 x 16			30
Do.	16 x 18 x 10			20
				280
Pass'r & f'ght house	16 x 38 x 14	Wood	1873	120
Passenger-house	20 x 48 x 16	"	1875	720
Baggage-room	16 x 20 x 14	"	1873	
Freight-house	20 x 40 x 16	"	1868	250
Hand-car house	16 x 18 x 9	"	1883	60
Water station		"		750
Coal-house	12 x 16 x 12	"	1886	30
Pass. & f'ght house		"	1854	120
Hand-car house		"	1867	30
				2,080
Pass. & f'ght house	16 x 45 x 16	Wood	1883	480
Hand-car house	10 x 16 x 8	"	1876	30
Pass. & f'ght house	16 x 18 x 14	"	1884	60
Hand-car house	10 x 16 x 8	"	1876	30
Passenger-house	20 x 58 x 16	"	1874	700
Round-house	65 x 745 x 20	Brick	1875	1,000
Machine shop	90 x 271 x 20	"	"	18,000
Boiler-room	50 x 172 x 20	"	"	
Blacksmith shop	50 x 77 x 20	"	"	1,000
Store-room & car shop	40 x 135 x 20	"	1874	2,000
Pat. round office	40 x 100 x 20	"	1875	1,200
Car-repair shed	75 x 116 x 20	Wood	"	400
Paint shop	70 x 116 x 20	Brick	1874	1,000
Boiler & sound h'se	22 x 47 x 20	"	1875	600
Car-erect. shops	55 x 500 x 20	"	1872	8,000
Oil-house	30 x 50 x 20	"	1876	300
Lodging-house	33 x 85 x 20	Wood	1883	1,000
Water station				1,500
Coal shutes				500

Schedule No.

County.	Township.	Descri Name of station.
202		
Marion	Warren	Brightwood
	Center	Mass. Ave.
		Indianapolis
Randolph	Wayne	Union City
	White River	Harrisonville
		Winchester
	Monroe	White River
		Farmland
		Parker
Wayne	Jefferson	White Water Hagerstown
	Jackson	Cambridge City
	Washington	Beesons

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Transfer-house	60 x 600 x 16	Wood	1876	3,000
Hand-car house	16 x 20 x 16	"	1878	30
Carried forward in county				49,830
Carried forward				79,420
Amount brought forward				79,420
Marion county brought forward				49,830
Coal-shed at depot	14 x 16 x 20	Wood	1883	100
Passenger-house	32 x 93 x 20	Brick	1877	2,000
Water tank				360
F'ght depot	56 x 350 x 16	Wood	1882	3,500
Agent's office	38 x 56 x 32	"	"	
Transfer depot	40 x 316 x 21	"	1881	2,500
Office	35 x 40 x 21	"	1883	
Ice-h'se & platform				120
Hand-car house	12 x 16 x 12	"	1887	30
Flag-house	8 x 12 x 10	"	"	30
				58,470
Pass'r-house	38 x 60 x 16	"	1861	500
Train-dis. office	20 x 34 x 25	"	1873	300
Hand-car house	16 x 18 x 19	"	1883	30
Round-house		Brick & wood		300
Water station				480
Switch-house	12 x 16 x 12	Wood	1887	30
Shop con'r dep't	18 x 26 x 16	"	"	50
Water station				300
Pass'r-house	21 x 42 x 16	"	1859	450
Baggage-room	16 x 20 x 14	"	1870	
Freight-house	22 x 55 x 16	"	1888	200
Hand-car house (2)	10 x 16 x 8	"	1876	60
Target-house	10 x 18 x 12	"	1884	75
Water station	New		1890	500
Do.	Old			150
Pass. & f'ght house	40 x 80 x 16	"	1877	450
Hand-car house	10 x 16 x 8	"	1875	30
Hand-car house	10 x 16 x 8	"	1874	30
				3,935
Total on Indianapolis division				67,270
division.				
Depot	20 x 60			300
Baggage-room	16 x 18			450
Water tank				250
				1,000

Schedule No.

County.	Township.	Descri Name of station.
Fayette	Connersville	Connersville
Franklin	Laurel	Laurel
		"
	Metamora	Metamora
	Brookville	Brookville
		"
	Highland	Cedar Grove
Dearborn	Harrison twp.	Harrison
203		St. Louis
Clay	Van Buren	Carbon
	Dick Johnson	Lodi
Kendricks	Washington	Spray
		Aron
	Center	Daville
	Marion	Hadley
	Clay	Reno
Marion	Center	Indianapolis
		Westside
	Wayne	Mt. Jackson
		Sunnyside
Parke	Jackson	Lena

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	30 x 32	Frame		1,000
"	40 x 40	"		450
Water tank	800 lbs.			200
Depot	24 x 59	Frame		450
"	36 x 50			400
Water tank	350 lbs.			350
Depot	14 x 30	Frame		50
				2,900
Water tank	16 x 20			450
White Water division amount				4,350
Amount carried forward				96,345
Amount brought forward				96,345
division.				
Depot (new)	48 x 22 x 14	Wood	1889	600
Hand-car house	10 x 12 x 10	"	1875	30
Section-house	16 x 25 x 16	"	1883	480
Water station				250
Section-house	16 x 24 x 16	"	1872	120
Hand car house	12 x 16 x 9	"	1887	30
				1,510
Hand-car house	12 x 16 x 9	"	1881	30
Telegraph office	8 x 28 x 7	"	1881	10
Depot	20 x 40 x 11	"	1875	50
Hand-car house	12 x 16 x 9	"	1881	30
Pump-house				450
Freight-house	18 x 30	"	1890	200
Depot	20 x 50 x 16	"	"	1,000
Hand-car house	12 x 16 x 9	"	1881	30
Section-house	16 x 24 x 8	"	1875	20
Water station				500
Water station		"	1884	200
Hand-car house	12 x 16 x 9	"	"	30
Depot	40 x 20 x 14	"	1881	300
Hand-car house	12 x 16 x 9	"	1882	30
				2,880
Section-house	31 x 25 x 12	Wood	1860	75
Kitchen	15 x 18 x 18	"	"	30
Hand-car house	12 x 16 x 9	"	1882	30
Car-repair h'se	10 x 20 x 10	"	1875	50
Watch-house	8 x 10	"	1881	
Telegraph off.	10 x 12 x 8	"	1882	30
Section-house	20 x 30 x 16	"	1889	300
				515
Hand-car house	12 x 16 x 9	Wood	1882	30
Section-house	30 x 18 x 14	"	1870	300
				330

Schedule No.

County.	Township.	Descri Name of station.
Putnam	Marion	Malta
		Dorwin
	Greencastle	Greencastle
	Madison	Fers
204		
Vigo	Nerins	Coal Bluff
		Fontanet
	Otter Creek	Grant
	Harrison	Terre Haute
	Sugar Creek	St. Mary's
	Fayette	Sanford
Dearborn	Lawrenceburgh	Lawby

Lawrence

Harrison
Nothing in

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Hand-car house	12 x 16 x 9	Wood		30
Depot (car)				10
Depot	64 x 26 x 15	"		600
Freight-house	24 x 48 x 14	"		250
Hand-car h'se (2)	12 x 16 x 9	"		60
Water station				500
Depot	12 x 18 x 14	"		150
Section-house	24 x 18 x 14	"		120
Hand-car house	10 x 12 x 10	"		30
Section-house	28 x 44 x 9	"		75
				1,825
Amount forward				$103,405
Amount brought forward				103,405
Depot	16 x 26 x 12	Wood	1875	300
Coal shutes				1,000
Water station				350
Section-house	16 x 24 x 16	Wood	1872	120
Telegraph of.	9 x 12 x 9	"	1884	5
Hand-car house				30
Hand-car h'se	12 x 16 x 9	"	1882	30
3d St. watch-h'se	7 x 10 x 7	"	1869	15
Sand-house	12 x 24 x 12	"	1882	50
Round-house	3 stalls	Brick	1889	1,800
Freight-house	164 x 24 x 16	Wood	1870	600
Depot	76 x 26 x 12	Brick	1872	1,500
Pump-rep. house	12 x 14 x 18	Wood	1865	10
Section-house	13 x 30 x 7	"	1870	180
Hand-car house	10 x 12 x 8	"	"	30
Freight "	231 x 24 x 16	"	1883	3,000
Office "	34 x 42 x 27	Brick		
Water station		Wood		
5th St. watch-house		"		
7th " " "		"		1,055
9th " " "		"		
6½ " " "		"		
Section-house	18 x 24 x 14	"	1869	60
Hand-car house	12 x 16 x 9	"	1882	30
Water station				1,000
Pass. & fr't house	16 x 44 x 16	Wood	1884	400
Section-h'se	23 x 42 x 14	"	1868	100
Hand-car h'se	12 x 16 x 9	"	1882	30
				11,695
burgh branch.				
Pass'r depot		Wood		1,000
Freight depot		"		500
Tool-house		"		10
				1,510
branch.				
Indiana.				
Total amount in county				**$116,610**

205 [Endorsed:] Return of C., C., C. & St. L. Railway Company. April 1, 1891. Received May 29, 1891. J. O. Henderson, auditor of state.

STATE OF OHIO, *Hamilton County,* } ss:

Wm. M. Greene, gen'l manager,* and E. F. Osborn, secretary, of the C., C., C. and St. Louis Railway Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railway company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

WM. M. GREENE, *Gen'l M'g'r.**
E. F. OSBORN, *Sec'y.*

Subscribed and sworn to before me this 27th day of May, 1891.

†JOSEPH MOSES,
Notary Public, Hamilton County, Ohio.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, hereby certify that the above and foregoing is a full, true, and complete copy and transcript of the annual return of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company to the auditor of state, as required by section 85, tax law 1891, as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

[L. S.] Witness my hand and official seal this 12th day of July, 1891.

J. O. HENDERSON,
Auditor of State.

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* General superintendent or general manager.

† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

206 Mr. DYE: Now we offer this assessment of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, as shown on page 83 of the printed proceedings of the State board of tax commissioners as returned by them to the auditor of state for the year 1891.

The said page 83 was admitted in evidence, the same being in the words and figures following, to wit:

207 Cleveland, Cincinnati, Chicago & St. Louis.

Indianapolis division:

83.84	miles main track	per mile	$27,900
2.44	" second main	"	8,000
39.05	" side track	"	4,000
83.84	" rolling stock	"	4,500
Improvements on right of way			105,920

St. Louis division:

80.47	miles main track	per mile	$28,700
31.08	" side track	"	4,000
80.47	" rolling stock	"	4,500
Improvements on right of way			18,755

Chicago division:

156.81	miles main track	per mile	$28,100
59.82	" side track	"	4,000
156.81	" rolling stock	"	4,500
Improvements on right of way			35,935

White Water division:

62.25	miles main track	per mile	$4,300
2.56	" side track	"	2,500
62.25	" rolling stock	"	4,500
Improvements on right of way			4,350

Lawrenceburgh branch:

2.91	miles main track	per mile	$5,000
3.71	" side track	"	2,000
2.91	" rolling stock	"	4,500
Improvements on right of way			1,510

Harrison branch:

.81	miles main track	per mile	$5,500
1.03	" side track	"	2,000
.81	" rolling stock	"	4,500

Columbus, Hope & Greensburgh.

24.28	miles main track	per mile	$11,400
4.24	" side track	"	2,000
24.28	" rolling stock	"	4,500
Improvements on right of way			955

208 The Columbus, Hope

209 Auditor's

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Annual Return of the Columbus, Hope & Greensburg Railroad Com

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by road on the 1st day of April, 1891, as required of rail

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							@ $3,000
Decatur				210	8	98	26,940
Bartholomew				745	15	30	45,900
				955	24	28	72,840

& Greensburg R. R.

form.

of state between April 1 and June 1.)

pany to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the C., C., C. & St. L. R'y Co., operating the Columbus, Hope & Greensburg Railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
----	----	----------	----	----	@ $800				
	None.		----	26	208				
	None.		3	98	3,184				
	None.		4	24	3,392				

210 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the — Rail- Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report of the C., C., C. & St. L. R'y Co., operating. **Owned, operated, or leased in whole or in part.**			
Locomotives, second class				
Passenger cars, first class				
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars				
Box cars				
Stock cars				
Coal cars				
Platform cars				
Wrecking and camp cars				
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars				
Tank or oil cars				
Pile-driving cars				
Push-cars				
Hand cars				
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana — — miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) — — miles, — hund.

Total length of road — — miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used.

— — miles, — hund.
— — miles, — hund.
— — miles, — hund.
— — miles, — hund.
— — miles, — hund.
— — miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. None.

Give name of express company doing business over your line. American.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. M. E. Ingalls, Cin'ti, O.

Give name and address of secretary of your company. J. C. Davie, Cin'ti, O.

Give name and address of gen'l manager of your company. W. M. Greene, Cin'ti, O.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Edwin A. Hill, R. E. ag't.

211

SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. R'y Co., operating — Rail- Company, on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,640.
State length of time road has been built. About 7 years.
State number miles of track laid with steel rail. 12.19 miles.
State number miles of track laid with iron rail. 12.09 "
State number miles of siding laid with steel rail. None.
State number miles of siding laid with iron rail. 4.24 miles.
State weight of iron and steel rail used in main track and sidings. 56 lbs.
State kind of "joints" or "chairs" used. Angle splices.
State proportion of ballast used on road. Rock, none; gravel, 2 m.; dirt, 22.28; other material, none.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the — Rail- Company on the 1st day of April, 1892, as required of railroad companies according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ..... $
Number of shares .....
Amount of capital stock paid up .....
Market value of stock per share .....
Actual value of stock per share .....

Indebtedness.

Amount of 1st-mortgage bonds .....
Amount of 2d-mortgage bonds .....
Amount of — mortgage bonds .....
Amount of — mortgage bonds .....
Total indebtedness, not including current expense for operating road ..
Current expense for operating road .....
Total listed valuation of all tangible property in this State .....

Earnings.

Gross earnings of entire road, as shown by last official report of company ..... $
Net earnings of entire road, as shown by last official report of company .....
Gross earnings of miles of road within this State, as shown by last official report .....
Net earnings of miles of road within this State, as shown by last official report .....
Average annual net earnings per mile over entire line, as shown by last official report .....
Average annual gross earnings per mile over entire line, as shown by last official report .....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

212-215 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water Rail- Company, Situated upon the "Right of

County.	Township.	Descri Name of station.
☞(Ar	range counties in alphabetic	al order.)
Bartholomew	Haw Creek	Hartsville Crossing
		Hope
		"
		"
	Columbus	Columbus
		"
		"
Decatur	Clay	Ewington
		"
		Burneys

216 Return of the Columbus, Hope and Greensburg R. R. for the year 1891. Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

No. 5.

Tanks, Other Buildings, Belonging to the C., C. & St. L. R'y Co., Operating —— Way" of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot		Frame		150
"		"		200
Tool-house		"		10
Water station		"		100
Pass'r depot		"		250
Freight "		"		25
Tool-house		"		10
				745
Depot		Frame		100
Tool-house		"		10
Depot		"		100
				210

217 The Fairland, Franklin

218 Auditor's

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Annual Return of the Fairland, Franklin and Martinsville Railroad

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by Railroad Company on the 1st day of April, 1891, as required

Counties.	Right of way and improvements thereon.					
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.	
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							@ $2,000
Shelby					5	71	11,420
Johnson				320	19	97	39,940
Morgan				570	12	55	25,100
				890	38	23	76,460

and Martinsville R. R.

form.

of state between April 1 and June 1.)

Company to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the *the* C., C., C. & St. L. R'y Co., operating the Fairland, Franklin & Martinsville of railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
					@ $800				
	None.		1	99	1,592				
	None.		1	59	1,272				
	None.		1	83	1,464				
	None.		5	41	4,328				

219 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the C., C., C. & St. L. R'y Co., operating — Rail— — Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report of C., C., C. & St. L. R'y Co., operating. **Owned, operated, or leased in whole or in part.**			
Locomotives, second class				
Passenger cars, first class				
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars				
Box cars				
Stock cars				
Coal cars				
Platform cars				
Wrecking and camp cars				
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars				
Tank or oil cars				
Pile-driving cars				
Push-cars				
Hand cars				
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana — miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) — miles, — hund.

Total length of road — miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used.

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. None.

Give name of express company doing business over your line. American.

Give names of fast-freight companies owning their own cars doing business over your line. None.

Give name and address of president of your company. M. E Ingalls, Cin'ti, O.

Give name and address of secretary of your company. J. C. Davie, Cin'ti, O.

Give name and address of gen'l manager or sup't of your company. W. M. Greene, Cin'ti, O.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Edwin A. Hill, R. E. ag't, Cincinnati, O.

220 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. R'y Co., operating the Fairland, Franklin & Martinsville Railroad Company, on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,600.
State length of time road has been built. About 28 years.
State number miles of track laid with steel rail. 17.14.
State number miles of track laid with iron rail. 21.08.
State number miles of siding laid with steel rail. None.
State number miles of siding laid with iron rail. 5.41.
State weight of iron and steel rail used in main track and sidings. 56 & 60 lb.
State kind of "joints" or "chairs" used. Chairs & splices.
State proportion of ballast used on road. Rock, none; gravel, none; dirt, 38.23; other material, none.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the — Rail- Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ..... $
Number of shares .....
Amount of capital stock paid up .....
Market value of stock per share .....
Actual value of stock per share .....

Indebtedness.

Amount of 1st-mortgage bonds .....
Amount of 2d-mortgage bonds .....
Amount of — mortgage bonds .....
Amount of — mortgage bonds .....
Total indebtedness, not including current expense for operating road ..
Current expense for operating road .....
Total listed valuation of all tangible property in this State .....

Earnings.

Gross earnings of entire road, as shown by last official report of company ..... $
Net earnings of entire road, as shown by last official report of company .....
Gross earnings of miles of road within this State, as shown by last official report .....
Net earnings of miles of road within this State, as shown by last official report .....
Average annual net earnings per mile over entire line, as shown by last official report .....
Average annual gross earnings per mile over entire line, as shown by last official report .....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

221-224 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water Fairland, Franklin & Martinsville Railroad Company, Situated

County.	Township.	Descri Name of station.
☞(Ar	range counties in alphabetic	al order.)
Johnson	Franklin	Franklin
	"	
	"	Urmeyville
Morgan	Jackson	Morgantown
	"	"
	Washington	Martinsville
	"	"
	"	"
	"	Van Sickle

226 The Cairo, Vincennes

227 Auditor's

(This blank to be filed with auditor

Annual Return of the C., C., C. & St. L. R'y Co., Operating the Cairo, Vincennes & Chi

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by Company, on the 1st day of April, 1891, as required of

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Knox	126	45	579	None.	6	85	12,278

No. 5.

Tanks, Other Buildings Belonging to the C., C., C. & St. L. R'y Co., Operating the upon the "Right of Way" of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot		Frame	Old	200
Tool-house		"		20
Water station		"		100
				320
Depot		Frame		200
Tool-house		"		10
Depot		"		200
Engine shed		"		50
Tool-house		"		10
Water station		"		100
				570
Amount forward				890

225 Return of the Fairland, Franklin and Martinsville railroad for the year 1891. Filed Oct. 18, 1892. JOHN R. WILSON, *Clerk.*

and Chicago Railway.

form.

of state between April 1 and June 1.)

cago Railway Company, to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the C., C., C. & St. L. R'y Co., operating the Cairo, Vincennes & Chicago Railway railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
				08	88				

228 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the — Rail- Company on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report of the C., C., C. & St. L. R'y Co., operating. **Owned, operated, or leased in whole or in part.**	-------	3,000	
Locomotives, second class		-------	2,000	
Passenger cars, first class		-------	1,500	
Passenger cars, second class		-------	1,200	
Pay cars		-------	2,500	
Officers' cars		-------	3,000	
Sleeping cars				
Dining and drawing room cars		-------	3,500	
Postal cars		-------	800	
Combination cars		-------	800	
Baggage, mail, or express cars		-------	800	
Box cars		-------	225	
Stock cars		-------	200	
Coal cars		-------	175	
Platform cars		-------	150	
Wrecking and camp cars		-------	400	
Ice and refrigerator cars		-------	400	
Fast-freight-line cars		-------	400	
Caboose cars		-------	250	
Tank or oil cars				
Pile-driving cars		-------	500	
Push-cars		-------	10	
Hand cars		-------	10	
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana ---------- — miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ---------- — miles, — hund.

Total length of road ---------- — miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. ——.

Give name of express company doing business over your line. American.

Give names of fast-freight companies owning their own cars doing business over your line. Cairo, Vincennes & Chicago R'y only.

Give name and address of president of your company. T. P. Bonfield, Kankakee, Ill.

Give name and address of secretary of your company. J. C. Davie, Cincinnati, O.

Give name and address of sup't of your company. J. W. Simmons, Mt. Carmel, Ill.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. ——.

229

SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. R'y Co., operating the Cairo, Vincennes & Chicago Railway Company, on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,600.
State length of time road has been built. From Ind'a State line to Carmi, Ill., 1872; balance since 1878.
State number miles of track laid with steel rail. 259.29.
State number miles of track laid with iron rail. 22.03.
State number miles of siding laid with steel rail. None.
State number miles of siding laid with iron rail. ——.
State weight of iron and steel rail used in main track and sidings. ——.
State kind of "joints" or "chairs" used. ——.
State proportion of ballast used on road: Rock, 25; gravel, 54; dirt, 180; other material: Line in Indiana, gravel ballast.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the — Rail- Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ..... $
Number of shares .....
Amount of capital stock paid up .....
Market value of stock per share .....
Actual value of stock per share .....

Indebtedness.

Amount of 1st-mortgage bonds .....
Amount of 2d-mortgage bonds .....
Amount of — mortgage bonds .....
Amount of — mortgage bonds .....
Total indebtedness, not including current expense for operating road .....
Current expense for operating road .....
Total listed valuation of all tangible property in this State .....

Earnings.

Gross earnings of entire road, as shown by last official report of company .....
Net earnings of entire road, as shown by last official report of company .....
Gross earnings of miles of road within this State, as shown by last official report .....
Net earnings of miles of road within this State, as shown by last official report .....
Average annual net earnings per mile over entire line, as shown by last official report .....
Average annual gross earnings per mile over entire line, as shown by last official report .....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

230–233 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water the Cairo, Vincennes & Chicago Railway Company, Situated

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
None in Indiana.		

234 Return of the Cairo, Vincennes and Chicago R. R. for the year 1891.
Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

235 The Cincinnati, La Fayette

236 Auditor's

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Annual Return of the C., C., C. & St. L. R'y Co., Operating the Cincinnati, La Fayette

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by railway, on the 1st day of April, 1891, as required of

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							@ 8,000
Benton				1,305	22	32	178,560
Newton				None.	1	43	11,440
				1,305	23	75	190,000

No. 5.

Tanks, Other Buildings, Belonging to the C., C., C. & St. L. R'y Co., Operating upon the "Right of Way" of said Road in — County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Use the Pennsylvania Company's.				

& Chicago railway.

form.

of state between April 1 and June 1.)

& Chicago Railway, to the Auditor of State, as Required by Section 85, Tax Law 1891.

No. 1,

the C., C., C. & St. L. R'y Co., operating the Cincinnati, La Fayette & Chicago railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
					@ 2,000				
	None.		4	22	8,440				
	"		None.						
	"		4	22	8,440				

237 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the C., C., C. & St. L. R'y Co., operating the Cincinnati, La Fayette & Chicago railway, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report of the C., C., C. & St. L. R'y Co. **Owned, operated, or leased in whole or in part.**			
Locomotives, second class				
Passenger cars, first class				
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars				
Box cars				
Stock cars				
Coal cars				
Platform cars				
Wrecking and camp cars				
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars				
Tank or oil cars				
Pile-driving cars				
Push-cars				
Hand cars				
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana — miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) — miles, — hund.

Total length of road — miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. See report of C., C., C. & St. L. R'y.

Give name of express company doing business over your line.

Give names of fast-freight companies owning their own cars doing business over your line.

Give name and address of president of your company.

Give name and address of secretary of your company.

Give name and address of gen'l manager or sup't of your company.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners.

EDWIN A. HILL, *R. E. Ag't, Cincinnati, O.*

238 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. R'y Co., operating the Cin'ti, La Fayette & Chicago Railway Company, on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 3,000.
State length of time road has been built. 16 years.
State number miles of track laid with steel rail. 23.75.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 2.43.
State number miles of siding laid with iron rail. 1.80.
State weight of iron and steel rail used in main track and sidings. 56 x 67 lbs.
State kind of "joints" or "chairs" used. Angles & splices.
State proportion of ballast used on road. Rock, —; gravel, 14.80; dirt, 8.95; other material, none.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the C., C., C. & St. L. R'y Co., operating the Cincinnati, La Fayette & Chicago Railway Company on the 1st day of April, 1891, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ..... $
Number of shares .....
Amount of capital stock paid up .....
Market value of stock per share .....
Actual value of stock per share .....

Indebtedness.

Amount of 1st-mortgage bonds .....
Amount of 2d-mortgage bonds .....
Amount of — mortgage bonds .....
Amount of — mortgage bonds .....
Total indebtedness, not including current expense for operating road ..
Current expense for operating road .....
Total listed valuation of all tangible property in this State .....

Earnings.

Gross earnings of entire road, as shown by last official report of company ..... $
Net earnings of entire road, as shown by last official report of company .....
Gross earnings of miles of road within this State, as shown by last official report .....
Net earnings of miles of road within this State, as shown by last official report .....
Average annual net earnings per mile over entire line, as shown by last official report .....
Average annual gross earnings per mile over entire line, as shown by last official report .....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

239-242 SCHEDULE

Number, Description, and Value of Station houses, Depots, Machine Shops, Water Cincinnati, La Fayette & Chicago Railway Company, Situated

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Benton	Boliver	Easton
	Do.	do.
	Oak Grove	Atkinson
	Centre	Fowler
	Do.	do.
	Richland	Earl Park
	Do.	do.
	Do.	do.
	Do.	do.
	York	Raub

243 Return of the Cincinnati, La Fayette & Chicago Railway Co. for 1891. Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

244 The Vernon, Greensburg

245 Auditor's

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Annual Return of the Vernon, Greensburg and Rushville Railroad Com

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by Company, on the 1st day of April, 1891, as required of

Counties.	Right of way and improvements thereon.				Main.		
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)			
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							@ 3,000
Jennings				440	8	81	26,430
Decatur				220	24	94	74,820
Rush				680	10	79	32,370
				1,340	44	54	133,620

No. 5.

Tanks, Other Buildings, Belonging to the C., C., C. & St. L. R'y Co., Operating the upon the "Right of Way" of said Road in — County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot		Frame		200
Tool-house		"		10
Depot		"		75
---do.		"		300
Tool-house		"		10
---do.		"		10
Depot		"		300
Water station		"		200
Coal bins		"		100
Depot		"		100
				1,305

and Rushville Railroad.

form.

of state between April 1 and June 1.)

pany to the Auditor of State, as Required by Section 85, Tax Law 1891.

No. 1,

the C., C., C. & St. L. R'y Co., operating the Vernon, Greensburg & Rushville Railroad railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
					@ 800				
	None.		1	93	1,544				
	"		1	99	1,592				
	"		1	02	816				
	None.		4	94	3,952				

246 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the — Rail- Company on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report C., C., C. & St. L. R'y Co., operating. **Owned, operated, or leased in whole or in part.**			
Locomotives, second class				
Passenger cars, first class				
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars				
Box cars				
Stock cars				
Coal cars				
Platform cars				
Wrecking and camp cars				
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars				
Tank or oil cars				
Pile-driving cars				
Push-cars				
Hand cars				
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana ——— — miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ——— — miles, — hund.

Total length of road ——— — miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. ——.

Give name of express company doing business over your line. ——.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. M. E. Ingalls, Cin'ti, O.

Give name and address of secretary of your company. J. C. Davie, Cin'ti, O.

Give name and address of gen'l manager of your company. W. M. Greene, Cin'ti, O.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Edwin A. Hill, R. E. ag't, Cincinnati, O.

247

SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the — Rail- Company, on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,640.
State length of time road has been built. Ab't 10 years.
State number miles of track laid with steel rail. 25.17.
State number miles of track laid with iron rail. 19.37.
State number miles of siding laid with steel rail. None.
State number miles of siding laid with iron rail. 4.94.
State weight of iron and steel rail used in main track and sidings. 56 lb.
State kind of "joints" or "chairs" used. Angle splices.
State proportion of ballast used on road: Rock, —; gravel, none; dirt, 44.54; other material, none.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the — Rail- Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ....
Number of shares ....
Amount of capital stock paid up ....
Market value of stock per share ....
Actual value of stock per share ....
} See report the C., C., C. & St. L. R'y Co., operating.

Indebtedness.

Amount of 1st-mortgage bonds .... $
Amount of 2d-mortgage bonds ....
Amount of — mortgage bonds ....
Amount of — mortgage bonds ....
Total indebtedness, not including current expense for operating road ....
Current expense for operating road ....
Total listed valuation of all tangible property in this State ....

Earnings.

Gross earnings of entire road, as shown by last official report of company ....
Net earnings of entire road, as shown by last official report of company ....
Gross earnings of miles of road within this State, as shown by last official report ....
Net earnings of miles of road within this State, as shown by last official report ....
Average annual net earnings per mile over entire line, as shown by last official report ....
Average annual gross earnings per mile over entire line, as shown by last official report ....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

248–251 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water "Right of Way" of said Road

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Jennings	Centre	North Vernon
	"	"
	Sand Creek	Brewersville
	"	"
	"	"
Decatur	Sand Creek	Westport
	"	"
	"	Letts Corner
	Clay	Horace
Rush	Anderson	Williamstown
	"	Milroy
	Rushville	Rushville
	"	"
	"	"
	"	"

252 Return of the Vernon, Greensburg & Rushville R. R. Co.
Filed Oct. 18, 1892. JOHN R. WILSON, *Clerk.*

253 The Cincinnati & Southern

254 Auditor's

(This blank to be filed with auditor

Annual Return of the Cincinnati and Southern Ohio River Railway Com

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by Company, on the 1st day of April, 1891, as required of

Counties.	Right of way and improvements thereon.						
	Acres.			Valde of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
							@ 3,000
Dearborn				500	3	69	11,070

No. 5.

Tanks, Other Buildings, Belonging to the —— Rail- Company, Situated upon the in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot		Frame		100
Tool-house		"		10
Depot		"		20
Tool-house		"		10
Water sta. & T. house		"		300
				440
Depot		Frame		100
Tool-house		"		10
"		"		10
Depot		"		100
				220
Tool-house		Frame		10
Do.		"		10
½ of depot		"		250
½ of engine-h'se		"		250
Water station		"		150
Tool-house		"		10
				680

Ohio River railway.

form.

of state between April 1 and June 1.)

pany to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the *the* C., C., C. & St. L. R'y Co., operating the Cincinnati & So. Ohio River Railway railroad companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
					@ 800				
	None.		1	11	888				

255 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the C., C., C. & St. L. R'y Co., operating —— rail— company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	See report of the C., C., C. & St. L. R'y Co., operating. **Owned, operated, or leased in whole or in part.**			
Locomotives, second class				
Passenger cars, first class				
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars				
Box cars				
Stock cars				
Coal cars				
Platform cars				
Wrecking and camp cars				
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars				
Tank or oil cars				
Pile-driving cars				
Push-cars				
Hand cars				
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana —— miles, — hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) —— miles, — hund.

Total length of road —— miles, — hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. None.

Give name of express company doing business over your line. American.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. E. F. Osborn, Cin'ti, O.

Give name and address of secretary of your company. J. C. Davie, " "

Give name and address of gen'l manager of your company. W. M. Greene, Cin'ti, O.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners.

EDWIN A. HILL, *R. E. Ag't, Cincinnati, O.*

256

SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the C., C., C. & St. L. R'y Co., operating the Cin'ti & So. Ohio River Railway Company, on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,640.
State length of time road has been built. About 4 years.
State number miles of track laid with steel rail. 3.69.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 111.
State number miles of siding laid with iron rail. None.
State weight of iron and steel rail used in main track and sidings. 56 & 60 lb.
State kind of "joints" or "chairs" used. Angle bars.
State proportion of ballast used on road. Rock, none; gravel, 3.69; dirt, none; other material, none.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the —— Rail- Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized ..... $
Number of shares .....
Amount of capital stock paid up .....
Market value of stock per share .....
Actual value of stock per share .....

Indebtedness.

Amount of 1st-mortgage bonds .....
Amount of 2d-mortgage bonds .....
Amount of — mortgage bonds .....
Amount of — mortgage bonds .....
Total indebtedness, not including current expense for operating road ..
Current expense for operating road .....
Total listed valuation of all tangible property in this State .....

Earnings.

Gross earnings of entire road, as shown by last official report of company ..... $
Net earnings of entire road, as shown by last official report of company .....
Gross earnings of miles of road within this State, as shown by last official report .....
Net earnings of miles of road within this State, as shown by last official report .....
Average annual net earnings per mile over entire line, as shown by last official report .....
Average annual gross earnings per mile over entire line, as shown by last official report .....

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

257–260 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water Cin'ti & So. Ohio River Railway, Situated upon the

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Dearborn	Centre	Aurora

261 Return of the Cincinnati and Southern Ohio River railway for the year 1891.
Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

262 Mr. DANIELS: We offer in evidence the returns on pages commencing at page 43 and extending to page 100, inclusive, except the returns on pages 53, 54, 55, 56, 57, 58, 71, 72, 73, 74, 75, & 76. That is what goes in.

The said several returns were admitted in evidence, the same being in the words and figures following, to wit:

263 Mr. SMITH: I think it is proper in this connection that you would say, we make no objection to it; that these returns you are offering in evidence, in addition to being returns to the auditor of state, were also laid before the State board of taxation.

Mr. DYE: I am going to make an agreement with you about those formal matters directly; let me get this finished first.

Now, we have offered the returns of all the roads owned, operated, or leased by the three C.'s and St. L. in the State of Indiana except the Peoria & Eastern and the road known as O., L. & W., from Indianapolis to the Ohio line.

We also want to introduce the report of the Terre Haute and Indianapolis Railroad Company. We offer the report of the Terre Haute and Indianapolis Railroad Company under the discrimination clause in our complaint and to show fraud.

Mr. KETCHAM: We are objecting to that. It is entirely immaterial what statement the Terre Haute & Indianapolis road made as to its value or its conditions or its circumstances or stocks or bonds or any statement made by the Terre Haute & Indianapolis road to the auditor of state in regard to its condition. It does not tend in any respect to throw any light on the question as to whether there was or was not a discrimination as to what its value was or what its value was not. The objection with reference to this is that it is immaterial, and we object for the further reason that it does not tend to support the claim of fraudulent discrimination, and, until a *prima facie* case is made, the court will not hear evidence upon that point.

No. 5.

Tanks, Other Buildings, Belonging to the C., C., C. & St. L. R'y Co., Operating the "Right of Way" of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	20 x 60	Frame		500

Mr. DYE: We offer this evidence as proof of fraud as showing that the board assessed one railroad between Indianapolis and Terre Haute with full knowledge of the fact that its earning capacity was less—the main track, I mean, of one railroad—with full knowledge of the fact that its earning capacity was
264 less, and that its terminals and side tracks were less—the St. Louis division less than the Vandalia, and its terminals and side tracks less—at a grossly exorbitant value as compared with the assessment placed upon the road of greater earning capacity and better physical condition. There is no way to prove fraud except by the statements of these commissioners or by their action. There is no way to prove what they knew, except to prove what information was produced to them. We offer this as *prima facie* evidence of actual fraud and as a thing in itself so grossly fraudulent that it would make this whole assessment void, unless it has been done upon some theory or system, as this is claimed to have been done, by which they valued the St. Louis division by taking values that did not properly belong to it as a part of the system—values from another State. We offer it to show that the assessment of the St. Louis division was greatly increased, so greatly increased over other roads in the State which were not parts of any system of roads partly in this State and partly in another, by considering, taking into account, having regard to value, and embracing in the valuation stocks and bonds of the system of roads, thus discriminating in favor of roads that did not belong to any system having values out of the State. We offer it as evidence tending to show that this discrimination, which is made apparent as to the property of the Big Four, affected the values of all the property of the Big Four in this State. I offer it as a part of the records of that board and of the assessment which they made of railroad property in 1891, which we are now inquiring into.

I am not now offering to your honor what somebody said, which I think we are clearly entitled to, nor any communication which

was made to the board, except that communication which was made under the forms of law—made to them as the law requires—and which is now a part of the records of that board.

I am offering this to show that the board knew at the time
265 they were making this unequal and unjust discrimination against the property of railroads partly in this State and partly out of this State, by considering the market values of stocks and bonds of consolidated companies, that they knew that they were loading up such roads with a value that did not inhere in them and did not belong to them; and I may say in this connection that I expect to follow this up with proof as to the actual value of this road and of other roads in the State, which were not parts of a system of roads, showing that those roads which are parts of a system have had their value increased twofold, threefold, or fourfold, and that while there has been an increase in the assessment of the roads in the State there has been no such grossly exorbitant increase as there has been in the assessment of those roads partly in and partly out of the State.

The COURT: The court will take this matter under consideration and make its ruling later. There is no witness waiting whose answer is contingent upon the ruling of the court, and I will reserve my ruling for the present.

Mr. SMITH: If the court please, and the gentlemen on the other side, there was one question which was asked Mr. Matthews the other day to which we objected. The court sustained the objection, but we wish now to withdraw our objection and permit the question to be answered. We have had it written out, and have concluded to withdraw our objection.

Mr. DYE: We will take that up when Mr. Matthews comes. I want to ask Mr. Henderson a question or two now.

J. O. HENDERSON, a witness called for the plaintiff, being first duly sworn, testified as follows:

266 Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. State whether these returns that have been offered in evidence of the Big Four railroad are made out upon forms which were furnished by the order of the auditor of state.

A. Yes, sir.

2 Q. Were they prepared by the commissioners or under their directions—the State board of tax commissioners?

A. Yes, sir.

3 Q. What are these pencil memorandums that I see here; for instance, there (indicating), things like that? Are they a part of the returns?

A. No, sir; it is no part of the report; it might have been made by some member of the board. They were all opened and considered by particular members.

Mr. DYE: We are not offering the pencil memorandum upon this report. We are offering the report as made in ink.

Mr. SMITH: Mr. Dye, there was an agreement you said you would make about those returns having been before the State board of tax commissioners. You said to wait until you got through offering returns.

Mr. DYE: Yes, sir; let the record show by agreement that the returns which have been introduced in evidence made by the three C.'s and St. L. Railway Company were laid before the State board of tax commissioners by the auditor of state, as the law requires, in lawful session; and also the returns of the Terre Haute & Indianapolis road were laid before the board of State tax commissioners as a taxing board in lawful session.

That last is subject to the court's ruling. The court is holding the question in reference to the return of the Terre Haute
267 and Indianapolis road under advisement.

Now, I want to show also—about which there is no doubt, I suppose—that this report that has been introduced in evidence of the State board of tax commissioners was returned to the auditor of state, and by him the proper return was made to the county auditor, and that these taxes have been extended upon the duplicate, and that the duplicate is in the hands of the county treasurer. I mean the report of the State board of taxation was returned to the auditor of state, and by him certified to the auditors of the counties, and that the taxes were extended.

Mr. KETCHAM: It is conceded that that has been done.

Mr. DYE: You will agree also that we are the owner of the strip of right of way in this county without requiring us to make formal proof of that—the property described in the complaint.

Mr. SMITH: Yes, sir.

Witness Henderson excused.

268 F. J. VAN VORHIS, a witness called for the plaintiff, being first duly sworn, testified as follows:

Examination in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. You appeared before the State board of tax commissioners of Indiana on the 16th of August, 1891?

A. Yes, sir; and prior to that time.

2 Q. I am inquiring about that time, and I want my questions that I ask answered; I do not care what you did before that time nor after.

A. Well.

3 Q. You were there about eight o'clock or half past seven at night?

A. About half past seven, I believe.

4 Q. You began——

A. Between half past seven and eight o'clock.

5 Q. You met in the rooms in the state-house where the board usually meets?

A. Yes, sir.

6 Q. And Governor Hovey was present?

A. Yes, sir.

7 Q. And all the other members of the board were present?

A. Yes, sir.

8 Q. And Alonzo G. Smith, attorney general, was present?

A. Yes, sir.

9 Q. You were at the time acting under employment of the board of county commissioners of Marion county?

A. Yes, sir.

10 Q. And appeared before that board?

A. Yes, sir.

11 Q. And you made an argument or a statement before that board that night?

269 A. Yes, sir; I spoke to that board.

12 Q. I will ask you now whether the printed argument or whether the argument contained in this report or printed copy of the argument made before the commissioners of Marion county and before the State board of tax commissioners of Indiana, the sworn appraisement of railroad property for taxation—Van Vorhis & Spencer, att'ys; Jacob A. Emmrich, Joseph L. Hunter, Michael H. Farrell, commissioners—made August 18th, 1891, from page 1 to page 38, inclusive, leaving out the postscript, you know——

A. Yes, sir; that's right.

13 Q. (continued). —is a correct copy of the statements made by you to that board on the night of August 18th, 1891, beginning about seven and a half o'clock, when the members of the board and the attorney general of Indiana were present.

A. The pages you refer to contain what I said to the board that night, except some verbal remarks that were made in answer to questions.

14 Q. Everything within those pages was said to the board?

A. Yes, sir.

15 Q. Were you sworn before you made those statements?

A. No, sir.

16 Q. Was any representative of the plaintiff- in this case there; and, if so, who was there to represent them?

A. I cannot say certainly. I had an impression that Mr. Cox was there, but I would not be sure of that.

17 Q. It is hardly worth while to make collateral issues unless you have a pretty distinct impression. I think we can establish conclusively that Mr. Cox was not there.

A. I know this: I had a very strong impression that Mr. Cox was there, and had I not heard since that he was not there I would have thought he was.

270 18 Q. You do not say as evidence to this court that he was there?

A. I heard it denied, and I was not sure enough about it to say that he was there.

19 Q. Then you are not able to state that any representative of the railroad company was there?

A. No, sir; I cannot say that any representative of the Big Four Company was there.

20 Q. And you were not cross-examined by anybody?

A. No; I was not cross-examined. I was not a witness.

Mr. DYE: Now, we offer in evidence the remarks of Van Vorhis & Spencer before the State board on that occasion.

Mr. SMITH: I object to that for the same reason that we objected to parts of Poor's Manual and other scrap-work that went before the board.

Mr. DYE: This is not scrap-work. In justice to Mr. Van Vorhis I must resent that imputation.

Mr. SMITH: Of course, I don't mean to make any reflection on Mr. Van Vorhis's argument.

Mr. DYE: May it please the court, I am not going to waste time in arguing this case or any questions in it except such as your honor indicates you want to hear argument about, and I submit cheerfully to the rulings of the court as I did yesterday. The point that I make upon this is one with which your honor is somewhat familiar. We have already introduced in evidence the record of this board, and it shows that this meeting was by appointment made as late as the 11th day of August. Here is the record, on page 9:

"The board fixed Tuesday evening at 7 p. m. for hearing
271 Mr. Van Vorhis, one of the attorneys of Marion county, on the subject of railroad assessments."

That is what the board said on the 11th day of August. The board had already fixed the day for hearing the Big Four Railroad Company, as we will prove by Mr. Fanning. They, on the third of August, notified us that they would begin the hearing of railroad companies and corporations on Thursday, August 20th, at 9 o'clock a. m., and they gave us notice. I don't remember what day it was; I think it was the day they were heard, however.

Now, may it please your honor, we go to work after they notified us to come on the 20th of August. It might not have been legal notice—that is not material—but, after notifying us to come on the 20th of August, they fix a day for Van Vorhis to come before that date to be heard upon the subject of railroad assessments. They did not invite us. We were not there. Your honor knows the allegation in that third paragraph, and that the third paragraph presents a Federal question. The State board was representing the State of Indiana. It is not a question of jurisdiction, nor anything of that sort. The question is whether the State board has power to do a thing of that sort. It is pleaded as fraud in one paragraph and it is also pleaded as failure of due process of law.

Mr. SMITH: In other words, the charge is that the board erred in admitting a wrong class of evidence.

Mr. KETCHAM: That is, that it erred in admitting when it might possibly have erred in considering evidence that it ought not to have considered.

Mr. DYE: This question was very fully argued before your honor during the argument on demurrer.

The COURT: I think, under the ruling in the 20th Kansas
272 case and the other cases, that inasmuch as they had to fix this assessment according to their best knowledge and judgment, and inasmuch as the law says they may seek information whence they will, that there was nothing improper in hearing this argument. Anything of this kind offered for the purpose of showing fraud I think it is proper to exclude. I will therefore sustain the objection to it under those decisions.

Mr. DYE: What does your honor say in regard to its competency under the specification as to due process of law? We offer it for both purposes.

The COURT: Well, I will hear you on that. I have heard a good deal. I have heard so much that I would like to have it given in sections.

To the ruling of the court in sustaining the objection, as stated, the plaintiff at the time excepted.

Mr. DYE: This question, may it please your honor, involves the vital question in the case, whether there is any such due process of law, and would it not be better for us all if your honor would reserve this question?

The COURT: I adopted this plan when I went on the bench—whether good or bad. I thought that the way to try a case was to try it closely, and let the argument come up on the exclusion or admission of testimony, and rule upon such questions as they arose. That has been my plan, and it has been my invariable rule in this case not to have evidence come in unless the court thought it was competent evidence. I do not think I have varied in any instance from that since I have been on the bench.

Mr. DYE: The only reason I made that suggestion was to
273 avoid recalling the witness, and it would give your honor the opportunity of deciding the question after the fullest hearing, and when there would be no chance of your judgment—when you would have the full benefit of all that could be said and heard. I do not believe I can say anything about that due process of law question that I have not already said to your honor. I understand——

The COURT: I was going to call your attention to that Highland case in 128th Indiana.

Mr. DYE: I am perfectly familiar with that case. I cannot argue the Highland case in connection with due process of law set forth in the third paragraph of this complaint, simply for the reason that if there is the slightest possible connection between the Highland case and due process of law, as set forth in this paragraph, I am unable to comprehend it. I believe I have made in the Van Vorhis case, in the two days of argument, all the argument that I care to make on the subject of due process of law. I will submit to your honor's decision and take an exception.

The COURT: I do not want to be arbitrary in this case. I want

to decide these questions after a full consideration of them, and *if* you will remember that a great deal has been said to the court in this case, and while perhaps I ought to keep it all in mind, I have not been able to do so. There has been so much said and I have not been in a condition, in connection with my other work, to give this matter the attention it has deserved. Until the day we commenced this case I was unable to give it any consideration. I intended to take the briefs after the argument and familiarize myself with these authorities, but the business of the court so shaped itself that it was impossible for me to give it any consideration whatever. Consequently I have heard it argued, but without any personal
274 consideration of the authorities, any such personal consideration of the authorities as I intended to give it, and I am not as familiar as I would like to have been with them before taking this case up.

Mr. SMITH: Do you contend to this court, Mr. Dye, that before the taxing board could hear evidence or require any information with relation to the values of your property that you would have to be present when it was being heard?

Mr. DYE: What I contend I have endeavored to state precisely and at some length in this paragraph, that before a court sitting to determine the value of real estate in order to marshall securities upon it, or a master of chancery exercising the judicial function of determining the values of real estate to marshall securities or for any other purpose, or before commissioners to condemn property in behalf of the State for improvements to determine its value, that when those commissioners hear testimony without notice to the other party and in the absence of the other party, the result, the award or judgment of the court or condemnation of the commissioners is void because they heard evidence in the absence of the other party. I have already produced to this court two cases showing that judicial functions are exercised by a taxing board in the assessment of values, and what I do say here is that a taxing board assessing values of property is governed by the same laws that any other board, any other tribunal, is when it is assessing the value of the property. I am not talking about an assessor who assesses upon personal inspection. These are not men who are bound to assess upon personal inspection. I presented two cases where the court said a taxing board exercised judicial functions in assessing property, and that they must assess upon evidence, and that there must be notice to the other party. What kind of notice and all that is not in question here now. It will come up hereafter; but in this case it is alleged there
275 was no notice of this meeting. If, after our adjournment at five o'clock, your honor was to go into the back room—I ought not to say that—it is not polite; but suppose some other judge was to go into the back room and hear evidence as to this case in our absence I apprehend there would not be much question that it was not due process of law.

The COURT: Suppose this court had the right to determine this case according to its best knowledge and judgment and did not have to hear any evidence at all, then what would you say?

Mr. DYE: If the court was to do that, or any tribunal bound by any rules of law was to do that, it would be a failure of due process of law.

The COURT: Let me make this suggestion. I do not believe there is anybody appreciates the importance of this case more than I do. I consider it, as you say, one of the most important cases, so far as I know, that has come before this court. I do not want to be hasty about any ruling that I make. I am going to make this suggestion. You have got to argue this question of due process of law under the second paragraph; it comes up as it does in the Federal question——

Mr. DYE: The second paragraph presents the question of due process of law on the act itself; the other paragraph presents it on the conduct of the board.

The COURT: I suggest that Dr. Van Vorhis stand aside until that argument is made, and that it be made upon both branches. It will not interfere with the trial of this case, and if the court is convinced by your argument that this was a judicial proceeding——

Mr. DYE: That is the same suggestion I made about fifteen minutes ago, if your honor please.

276 The COURT: Your suggestion was to hear the evidence and reserve the ruling.

Mr. DYE: But the record must be made up, your honor. I offer it now, and your honor can take it under consideration.

The COURT: Very well. I have indicated what I considered would be the proper way. I suggest that when the case is argued you argue this proposition. This formal offer is made, and the court takes it under consideration, under advisement. I do not think it makes any difference about this matter as to when this argument is made. I made the suggestion I did for the purpose of saving time. I do not like evidence to come in until I am satisfied that it is competent and proper, because I do not want to encumber the record with evidence unless the court concludes that it should come in. I never have allowed any evidence to come before this court unless I considered it proper evidence. That is the course I have adopted, and I would like to adhere to it, but Mr. Dye has made his offer and I will take it under consideration, and if on the argument of this case I am convinced that it is proper and competent, why it can go in. I want to hear the argument on that branch as well as the constitutional branch of the case, and if I am convinced the plaintiff has a right to this evidence it can go in. I am not going to decide in advance anything about these questions. I want to decide them after the fullest argument, but I do not believe I have decided any question in this case, but what I have been—perhaps I was in error, but I have not decided any question in this case—but what I have been convinced in my own mind that my ruling was right.

Mr. DYE: The court then takes this question under advisement?

The COURT: Yes, sir.

277 Cross-examination (VAN VORHIS):

Questions by WILLIAM A. KETCHAM, Esq.:

21 Q. You are an attorney-at-law?
A. Yes, sir.
22 Q. You were there before the board representing the board of commissioners of Marion county, as their attorney?
A. Yes, sir.
23 Q. The paper that Mr. Dye has had you identify, when was it printed, if at all?
A. It was printed some time just after the 27th of August.
24 Q. It was printed before the 8th of September, was it?
A. Oh, yes,
25 Q. Do you know Mr. John T. Dye?
A. Yes, sir, I do.
26 Q. Were you at any time present before the State board of tax commissioners when Mr. Dye was there?
A. Yes, sir.

Mr. DYE: That we object to as not being proper cross-examination. If you want to prove what I said before the State board of tax commissioners, make it a part of your own case, and do not attempt to make it by cross-examination of Mr. Van Vorhis.

27 Q. In what capacity was Mr. Dye there?
A. As attorney for the three C.'s and St. L., I believe.
28 Q. Are you acquainted with the fact whether or not Mr. Dye was general counsel for the three C.'s and St. L.?
A. I was so informed.

Mr. DYE: It is so stated in the record.

29 Q. Now, I will ask you if at any time before the State board of tax commissioners made their return you took any steps
278 to inform Mr. Dye, as the counsel of the Big Four, in regard to the argument that you had made before the board; and, if so, what you did.
A. I don't know whether I get that question.
(Question repeated.)
A. Oh; I don't know that I took any steps to inform him; had some conversation with him.
30 Q. Did you give him a copy of your brief?
A. I sent him a copy of the brief through the mail as soon as it was published.
31 Q. How?
A. Through the mail.
32 Q. Was it addressed to Mr. Dye?
A. Yes, sir; addressed to Mr. Dye at his office.
33 Q. In this city?
A. Yes, sir.
34 Q. Was there a stamp on it?
A. Yes, sir.

35 Q. And put in the box in the usual way?

A. Yes, sir.

36 Q. Now, did you, in your conversation with Mr. Dye, ever mention to him that you had made an argument and that you would send him a copy of it?

Mr. DYE: May the court please, I do not think that is material. The time and place, at least, ought to be fixed.

The COURT: I think the time and place ought to be fixed. I will sustain the objection to the question.

37 Q. If you ever had a conversation with Mr. Dye on that subject you may tell the court when it was and where it was.

A. I am not right sure where it was. It seems to me it was on Pennsylvania street, on the first square north of Washington
279 street, or at the state-house, I am not right sure, but the next day or the second day after I had been before the board on the evening of the 18th of August, or within two or three days, Mr. Dye spoke to me.

Mr. DYE: I am objecting to what Mr. Dye said to him, may the court please. That is not material as to the due process of law here. Mr. Van Vorhis was before the board on the 18th of August, and what he said to Mr. Dye afterwards could have no effect upon the question of law involved in that paragraph.

The failure of due process of law presented here is not the want of notice of the fact that the board was going to meet, but it is the fact that they heard evidence and statements in my absence. It is the failure of notice as to that night. No subsequent talk could cure that. Suppose one of the commissioners who made the condemnation proceeding in the viaduct matter told one of the parties afterwards, "Why, this other man has talked to me about this, and said so and so;" would that cure the error? Your honor knows that it would not. The due process of law that is required is the orderly proceeding by which a court or tribunal exercising judicial functions shall not act upon that matter in the absence of the other party. If I knew a jury had heard evidence in my absence that would not cure the error. I would not be bound to introduce another particle of evidence. If I knew a court or master in chancery or arbitrators had even been talked to by the attorney on the other side, that is the end of it. That is the important question that I present in this paragraph. I am not presenting, gentlemen, the question of due process, but I am presenting the neat, clean question as to whether this board, exercising judicial function, can hear evidence about my case in my absence without notice to me.

They may give me notice by favor that they would hear me
280 on the 20th, but they go to work and hear Mr. Van Vorhis on the 18th. I learn about it. Well, they reply, your case was tried on the 18th. Mr. Van Vorhis was here and talked an hour and a half about the case. They meet with Mr. Van Vorhis on your case and settle your case in your absence. Then he tells you about it. That is the question. Now, they want to prove that

he told me upon the street that he had made a speech before the board and that he would send me a copy of it, or that I said to him to send me a copy.

38 Q. Do you know whether the public prints mentioned the fact that you would have a hearing before the board?

Mr. DYE: I object to that question, your honor. Plaintiff was not bound to go to the newspapers for such notice.

The court sustained the objection.

40 Q. I will ask you to state whether there was any report made the next morning in the newspapers of the city of your speech to the board.

Mr. DYE: I object to that for the same reason: we are not bound to go to the newspapers.

The court sustained the objection.

Re-examination.

Questions by Mr. DYE:

41 Q. You did not send me a copy of this argument until it was printed?

A. No, sir.

42 Q. And when it was printed you never had but one edition struck off?

A. Yes, sir; there was two.

43 Q. Were they both alike?

281 A. So far as the argument was concerned they were both alike. This contains a copy of a newspaper article of August 27th, the last one, so that I know this was printed after that.

44 Q. Let me see that, please.

A. That (indicating) is a copy of the first edition.

45 Q. The one I have got has got all these tables and things in it?

A. Yes, sir.

46 Q. Which did you send me, the first edition or the second edition?

A. I sent you the first edition. You afterwards sent to my office—a young man came to my office saying that you had mislaid the other, and asked for copies, and I sent a second copy.

47 Q. This (indicating) was printed after August 27th?

A. Yes, sir.

48 Q. Did the whole thing go into the hands of the printer after August 27th?

A. Oh, no, sir; it was all in type on the morning of August 27th, except the last communication there.

49 Q. And how long after August 27th did you get that?

A. I think I got four or five hundred of them the next morning.

50 Q. August 28th, you think?

A. I am not right sure about that, but I think that is the way it was.

50½ Q. How many days was it after the 27th of August, was it, before you got these from the printer?

A. I think I got them the 28th or 29th.

51 Q. Which do you think it was, the 28th or 29th?

A. I got them between that and September 1st.

52 Q. Do you think you sent these off before September 1st—these that you mailed?

282 A. Oh, yes; I mailed some of them right the next day; immediately.

53 Q. What day?

A. Well, immediately.

54 Q. Now, then, August 27th one of these articles appears here?

A. Yes, sir; that was the morning.

55 Q. August 28th was Friday, August 29th was Saturday. When do you think it was?

A. This article at the end says August 27th, was published on the morning of the 28th.

56 Q. It would go into the hands of the printer that day?

A. No, sir; that night, and came out in the Morning Sentinel of August 28th in the morning, and that went into the hands of the printer that morning, was set up that morning.

57 Q. Had the proof of the other been corrected at that time?

A. Yes, sir; everything.

58 Q. How soon did you get those?

A. I got some of them almost immediately.

59 Q. The same day or the next day? Did you get any of them before Monday? August 28th is Friday. It appeared on August 28th. There is one intervening day.

A. Then I got some of them Saturday. Very surely I got them on Monday. I cannot be absolutely certain about the day. My impression is I got them almost immediately.

60 Q. The same day?

A. I think so. I will tell you: I took the first I got—I got fifty or 100 of them—and took them with me as I passed the Sentinel office on Saturday, and left them on the table of the board of tax commissioners there.

283 61 Q. August 31st. That was Monday?

A. Yes, sir.

62 Q. You think you sent them that day?

A. Yes, sir; they were sent out either Saturday or Monday, I think; of course I am not right positive about that.

By Mr. DANIELS:

63 Q. Did you send one to us at the same time you sent one to Mr. Dye?

A. Well, I sent them to all the railroad attorneys about the same time.

By Mr. KETCHAM:

64 Q. How many people were there that night?
A. I think a dozen besides the board.

By Mr. DYE:

65 Q. Can you name them?
A. I cannot. I think most of them were strangers to me, except Mr. Spencer and Mr. Garriger, a client of ours. Mr. Smith was there. I know there was a row of seats along the south side of the house that was about full.
66 Q. Was Mr. Jacob P. Dunn there?
A. He was there a part of the time—a little while; he was not there very long.

By Mr. KETCHAM:

67 Q. Were the doors locked and the windows closed?
A. The doors were all opened. It was a very hot night, I know.

And further the witness saith not.

284 Mr. DYE: Now, I will indicate the parts of the report of the proceedings of the State board of tax commissioners for the year 1891 that I desire to put in evidence.
We offer in evidence, first, the entry on page 3, under date of March 21st, 1891, showing the organization of the board, beginning on page 3 and ending on page four.

The said proceedings were admitted in evidence, the same being in the words and figures following, to wit:

STATE OF INDIANA,
OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *March* 21, 1891.

In accordance with an act of the General Assembly of the State of Indiana entitled "An act concerning taxation," etc., approved March 6, 1891, the State board of tax commissioners within and for the State of Indiana convened at the office of the auditor of state and organized as required by law, the following members being present, to wit: Alvin P. Hovey, governor; Claude Matthews, secretary of state; Josiah Gwin and Ivan N. Walker, commissioners, who took and subscribed to the following oath:

We, Alvin P. Hovey, Claude Matthews, Josiah Gwin and Ivan N. Walker, and each of us, do solemnly swear that we will support the Constitution of the United States, and the constitution of the State of Indiana; that we will faithfully and impartially discharge our duties as members of the State board of tax commissioners; that we will, according to our best knowledge and judgment, assess and equalize the property of the several counties of this State, and that we will in no case assess any property at more or less than its true

cash value, as the same is defined in section 53 of the act concerning taxation, so help us God.

ALVIN P. HOVEY, *Governor.*
CLAUDE MATTHEWS,
Secretary of State.
JOSIAH GWIN,
IVAN N. WALKER,
Commissioners.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within named, Alvin P. Hovey, Claude Matthews, Josiah Gwin and Ivan N. Walker, members of the State board of tax commissioners, who were sworn according to law and subscribed their names thereto.

In witness whereof, I hereunto set my hand and official seal this 21st day of March, A. D., 1891.

[L. S.] ANDREW M. SWEENEY,
Clerk Supreme Court.

And the board now organized with Alvin P. Hovey, governor, as chairman; and Joseph T. Fanning, deputy auditor of
285 state, was unanimously chosen secretary of the board and took and subscribed to the following oath:

I, Joseph T. Fanning, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of tax commissioners to the best of my ability, so help me God.

JOSEPH T. FANNING.

STATE OF INDIANA, } ss:
Marion County, }

Before me personally appeared the within-named Joseph T. Fanning, who was duly sworn according to law and subscribed his name thereto.

In witness whereof I hereunto set my hand and official seal this 21st day of March, A. D., 1891.

[L. S.] ANDREW M. SWEENEY,
Clerk Supreme Court.

On motion of Commissioner Walker, the secretary was instructed to request the attorney general to construe that part of section 53 of the tax law of 1891, appertaining to credits of indebtedness, and to give his written opinion as to what indebtedness should be permitted to be deducted from personal property credits (see page 18, tax law, 1891), and thereupon the board adjourned.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOSEPH T. FANNING,
Secretary of the Board.

286 Mr. DYE: We offer in evidence the proceedings of August 3rd, 1891, beginning at page 4 and ending on page 5.

The said proceedings were admitted in evidence, the same being in the words and figures following, to wit:

INDIANAPOLIS, IND.,
MONDAY, *August* 3, 1891—9 o'clock a. m.

The State board of tax commissioners of the State of Indiana met in the office of the auditor of state at 9 o'clock a. m. on the 3d day of August, 1891, being the first Monday of said month, in accordance with section 129 of the tax law approved March 6, 1891.

Present, Alvin P. Hovey, governor, chairman of the board; Claude Matthews, secretary of state; J. O. Henderson, auditor of state; I. N. Walker and Josiah Gwin, commissioners, and Joseph T. Fanning, deputy auditor of state and secretary of board.

Hon. J. O. Henderson, auditor of state, now took and subscribed to the following oath:

STATE OF INDIANA, } ss:
Marion County, }

I, J. O. Henderson, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, that I will faithfully and impartially discharge my duties as a member of the State board of tax commissioners, that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and that I will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help me God.

J. O. HENDERSON.

Subscribed and sworn to this 3d day of August, 1891.
GEORGE U. BINGHAM,
Notary Public.

On motion of Mr. Walker the following order of business was adopted for the consideration of the business before the board:

1st. The consideration of appeals from county boards of review.

2d. The equalization of assessments of realty as returned by counties.

3d. The assessment of railroad property and corporations.

On motion of Mr. Walker, the secretary of the board was directed to notify railroad companies and corporations that they would be required to put in writing their statements regarding the assessment of their property, and that only brief oral statements could be heard.

On motion of Mr. Henderson, the secretary was directed to notify the railroad companies and corporations that they will be heard on a certain date, and that the secretary designate the number to be heard each day.

On motion of Mr. Walker, it was agreed to begin the hearing of

railroad companies and corporations on Thursday, August 20, 1891, at 9 o'clock a. m.

On motion of Mr. Walker, the board then adjourned until next Monday morning, August 10, 1891, at 10 o'clock.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOS. T. FANNING,
Secretary of the Board.

287 Mr. DYE: We offer in evidence the action of the board fixing the time to hear Mr. Van Vorhis, to be found on page 9, in the proceedings of August 11th:

The record of said action was admitted in evidence, the same being in the words and figures following, to wit:

"The board fixed Tuesday evening at 7 p. m. for hearing Mr. Van Vorhis, one of the attorneys of Marion county, on the subject of railroad assessments."

Mr. DYE: We also offer in evidence the proceedings on the 18th of August, 1891, found on page- 22 and 23.

The said proceedings were admitted in evidence, the same being in the words and figures following, to wit:

INDIANAPOLIS, INDIANA, TUESDAY, *August* 18, 1891.

The State board of tax commissioners met pursuant to adjournment. Present: Alvin P. Hovey, governor and chairman; Claude Matthews, secretary of state; J. O. Henderson, auditor of state; I. N. Walker and Josiah Gwin, commissioners, and Joseph T. Fanning, deputy auditor of state and secretary of the board.

Charles E. Walker and Korbly & Ford, of Madison, were granted permission to file a brief on the question of the right of the board to compel the banks of the State to file lists of their depositors with the board.

The board in executive session considered the petition of V. T. Malott and J. P. Frenzel, and, after consultation with the attorney general, decided to dispose of the petition at 2 p. m., to which time the board adjourned.

288 TUESDAY, *August* 18, 1891—2 p. m.

The board reconvened at 2 p. m., with all the members present, and went into executive session and considered the petition of Messrs. Malott and Frenzel and afterward made the following order, viz.:

In the matter of the petition of V. T. Malott, J. P. Frenzel and others, representing themselves and certain other bankers of the State of Indiana, heretofore notified to appear and produce a list of the names of their depositors, and the amounts to the credit of each depositor, and to answer such questions, under oath, in relation thereto as the board would require, coming on for hearing, and the board being advised in the premises overrules said petition, and directs and orders that each and every one of said bankers who was

served with notice be given ten days from the 19th day of August, 1891, to wit: until the 29th day of August, 1891, within which to produce to this board a full and complete statement of the names of their respective depositors, and the amounts to the credit of each, for the purpose of ascertaining the amount and deposits in said banks on the 1st day of April, 1891, and to then and there give such evidence, under oath, as the board may require, touching the names of such depositors, and the amounts of such deposits, and failing to do so on or before said 29th day of August, 1891, to show cause why they should not be attached and punished by the board as for contempt.

The board then took up the appeal of Geo. W. Applegate, of Harrison county, and made the following order:

In the matter of the appeal of Geo. W. Applegate, of Corydon, from the assessment of the county board of review of Harrison county it was

Ordered, that the appeal of said Geo. W. Applegate, from the county board of review of Harrison county, be sustained, and that the auditor of Harrison county be instructed to add to the personal list of said George W. Applegate the sum of $5,400.

Hon. Frank Ader appeared before the board and made a sworn statement as to the assessment of Putnam county.

W. S. Christian appeared and made a sworn statement as to the assessment of Hamilton county. He also gave evidence as to the assessment of Z. T. Hobbs, who had appealed from the decision of the Hamilton county board of review fixing his assessment.

Asa C. Williams, president of the First National Bank of Mt. Vernon, made a sworn statement as to the value of that bank.

James Moffett made a sworn statement as to the assessment of lands in Fountain county.

The board thereupon adjourned until 10 a. m., to-morrow, August 19, 1891.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOSEPH T. FANNING,
Secretary of the Board.

289 Mr. DYE: I want to say that on August 21st, at 2 p. m., I appeared before that board, representing the system. That is on page 31, and the date is on page 30, and the record shows what I said there. I want to put that in the record for personal reasons rather more than anything else. I offer in evidence the record on page 31, showing my appearance and what I said.

The said entry was admitted in evidence, the same being in the words and figures following, to wit:

"John T. Dye, representing the C., C., C. & St. L. system of railroads, appeared and made a lengthy statement concerning the physical condition and earning capacity of the roads embraced in this system. All of the roads embraced in that system are assessed high. The valuations are high from whatever standpoint they were judged. The main lines paid fully 3 per cent. of their gross earnings in

taxes. The Peoria & Eastern was entirely too high. It was now paying $3\frac{1}{100}$ per cent. of its gross earnings and 21 per cent. of its net earnings to the State of Indiana in the shape of taxes. A great deal of the rolling stock is old and inferior. Taking into consideration the physical condition and earning capacity of this property, it ought to be reduced rather than raised."

Mr. DYE: I also offer the proceedings before the board on the 25th day of August, 1891, found on page- 36, 37, 38, 39, and 40, embracing the opinion submitted to the board by the attorney general.

Mr. KETCHAM: We object to that.

290 Mr. DYE: We offer it as part of the records of this board. We insist that under the pleadings in this case this communication is competent as throwing light upon the conduct, purposes, and intentions of the board. This is an opinion which they asked for, and it is the only opinion which they have spread upon the record. It is an opinion which sets forth their powers in terms as strong as language can make them and holds forth to them the fact that they are not responsible to anybody; that there is no redress by the courts against oppressive taxation; that confiscation can be committed and there is no redress except an appeal to the people. We think, may it please your honor, that under the pleadings in this case we have the right to know all the facts that were before them that tend to show their intention or their conduct or what they were doing.

The hour of five o'clock having arrived, the court adjourned until to-morrow, Friday, July 1st, 1892, at nine o'clock a. m.

291 FRIDAY, *July 1st*, 1892—9 o'clock a. m.

The court met pursuant to adjournment.

Present: The same as on yesterday.

Mr. DYE: When we adjourned last evening I was offering certain parts of this record, and I had offered the record of the proceedings on August 25th, commencing on page 36, and there was an objection.

Mr. SMITH: On that objection, may the court please, I want to say that that opinion was addressed to Governor Hovey and given upon his request while the taxing board was in session considering the question of requiring bank officers to testify as to their deposits, and the governor asked me whether that was within the constitutional powers of the board, whether it could be legally exercised. I gave him that opinion. In that opinion I illustrated the constitutional power of taxation by citations from Cooley and Chief Justice Marshall and others, and the opinion has no relation whatever to the taxation of railroad property or any other property, but just simply to the taxing power, that is all.

Mr. KETCHAM: I call your honor's attention to the commencement on page 36, Tuesday, August 25th, 1891. Your honor will see from the record that the 20th of August was the time set for

hearing Mr. Dye elucidate the legal proposition in regard to the proper method of taxing railroads, and if the court will look through this it will see that about that time there was a great deal
292 coming up before the board on the subject of inquisitions on banks, and now the record says:

"In response to a question submitted by the State board of tax commissioners to the attorney general, that official appeared and submitted a written opinion, which is as follows."

The question that was submitted is not here, so that we have not full light upon that subject. Then it also appears, at page 37, at the end of the fourth paragraph, that portions of the opinion are not included in this record, and then, after the recitation of the opinion, which terminates at page 40, it says:

"On motion, the board met in open session.

"The governor declined to take any action in the bank matter and absented himself," etc.

And then it goes on to decide with reference to the banks.

Now, it seems to me that the whole of this day's session shows conclusively that it was an opinion that was rendered, not with reference to the assessment of railroads at all, but with reference to the question of assessing banks, which was then under consideration, and inasmuch as the entire opinion is not spread of record, inasmuch as the question is not *in* to which that opinion is responsive, and inasmuch as it appears upon the internal evidence of the opinion itself and of the record of that day's proceedings that it was an opinion with reference to the assessment of banks and not with reference to the assessment of railroad track and rolling stock or railroad property at all that it does not have any tendency to throw any light upon the questions before the board. The bank
293 matters proceed from page 41 through to the end of that day's session, which shows that Governor Hovey declined to take any part in the bank matter at all and left the room, and that Secretary Matthews was called to the chair, and Mr. Henderson introduced the motion. Then there was a subpœna ordered, and then there was a return made by the sheriff, and then the agreement of the bankers, and then it appears following, at page 43, after reciting the agreement between the bankers and the board, that Mr. Malott was placed upon the stand and was asked certain questions in regard to his bank, and under his attorney's advice he declined to answer questions; and then there was something with reference to the Bank of Bluffton and Mr. Dougherty, and then there was something with reference to the bank down at Evansville and Mr. Decker, who was asked certain questions and declined to answer and was fined and sent to jail.

Now, on page 56, Mr. Williamson, representing the Wells County bank, made a statement concerning the bank, and F. D. Raymond, secretary and treasurer of some road, made a statement in connection with the written statement before filed, and Mr. Lyford made a certain statement in reference to the Evansville and Terre Haute and Chicago Railway Company and the Indiana Block Coal Company, and then they went into executive session and adjourned.

It appears clearly from the record itself and the matters referred to that this was an opinion that was not made with reference to the taxation of railroad companies at all, and therefore we submit it is irrelevant and immaterial.

294 We further object that it is incompetent, for that if it has any tendency at all it has a tendency to show the mental process by which the board arrived at its conclusion, and therefore under the rule of the court heretofore in numerous instances it is not competent.

Mr. DANIELS: If the court please, by turning to page 31 of the proceedings your honor will discover that on the 21st day of August Mr. Dye had appeared before the State board, as the representative of the plaintiff company in this case, with respect to the assessment of its property. On the 25th of August, as appears from page 36, after Mr. Dye had so appeared, this opinion was submitted to the board by the attorney general. Our contention is that this opinion is the interpretation of the statute under which the State board was assuming to act with respect to its powers as a State taxing board, and we contend that when a tribunal of this character, by necessity of the act which it is called upon to perform, must interpret a statute under which it is assuming to act that the party who is affected by such construction of the statute should be privileged to show what construction was placed upon that statute, and especially with respect to the power which the board was exercising in carrying out the duties devolved upon them by that statute, and we refer by way of analogy to the authorities of this kind arising under constructions of the laws of the land department of the United States, where the power is given. I may not use the proper designation of the officer, but the power is given an assessor or a register of the land office to issue patents under the statutes of the United States, from whose decision there is an appeal to the Secretary of the Interior. Now, as we understand the cases, they go

295 to the effect that if either of those officers, in passing upon the matter of title as between the two claimants under a statute of the United States, puts a construction upon that statute which involves the rights of either of the litigants as to that title such litigant has the right to show the construction, and in a proceeding by way of injunction the court will say whether or not there was a mistake committed by the officer who is held to be a tribunal under the Land Department laws in the interpretation of the law, and to that point we submit this opinion of the legal adviser of the board as to the construction which was placed upon this statute. We do not claim that we have established simply by the submission of the opinion that the board adopted that construction, but we offer the evidence, not upon its weight, but for what it is worth.

Mr. DYE: Before the matter is closed I want to make an additional suggestion. We offer this evidence—in addition to the reasons stated by Mr. Daniels—as a fact and condition under which this board acted, as showing the advice which they received from the legal advisor of the board as to their powers under this law. We have a right, I apprehend, to prove any acts or any facts from

which any inference can be drawn in support of the allegations of this complaint. We have the right, we suppose, to prove any fact which occurred in the presence of that board which would tend to show that the action of the board was intended to discriminate unlawfully against railroad property and in favor of other real estate or any act which would tend to show
296 that the board had intended to discriminate unlawfully against one class of railroads and in favor of another class of railroads. Now, I understand the gentleman's objection to go to the ground that this was a mental process that we are seeking to prove. All fraud involves a mental process—intention. We have not yet been able to prove any single act, although we have offered evidence which would tend to show that this board committed fraud in the respects charged in the complaint in unlawfully and intentionally putting the property of the railroad company at a higher sum than other real estate was put, and that has been rejected upon the express ground that we could not prove these facts as to values squarely until we had first proved fraud. We offer these facts as proof of fraud, and I ought to say to your honor, as to this proof, we think it is material, whatever its weight may be, for your honor to consider, as showing under what advice this board acted, under what construction of the law they acted, as showing that they acted under a construction of the law which placed in this board unlimited power and authority, in the language of this opinion—I read from page 38—that it was "possessed of the highest powers known to the Government. It is even higher than the court, for in the 'exercise of the taxing power' the judiciary can afford no redress against even oppressive taxation so long as the legislature in imposing it shall keep within the limits of legislative authority and violate no express provisions of the Constitution.' By the power you possess you may commit the injustice of taxing property so high that it would be in the nature of confiscation, and the courts could not afford redress so long as the rate remained
297 'uniformly equal,' and from the wrong thus done there would be no appeal except to the people."

We say, may it please your honor, the fact that the board asked advice from its legal adviser, and that they were advised, as I have read to your honor, is a proper circumstance to be considered, not that it is conclusive in itself—I am not now discussing its weight—but that, to go with other circumstances in the case, it is proper to be considered as showing what the conduct of the board was. They were advised that they had the power to do the things that we charge them with doing by their legal adviser. Is that a proper consideration? They were advised, in answer to the communication sent to Mr. Smith, by the board. They spread this opinion upon their record and it is a part of their record. The question was asked, Mr. Ketcham says, with reference to banks. It don't matter what the question was asked for. What we offer it for is to show the construction which was placed upon the powers of this board by the legal advisor of the board, and it is put in this record, which in itself is a fact from which the inference might be made that

the board accepted and acted under this opinion. It may be excluded for the reason that we can prove nothing that tends to show what the intentions of the board were or that tends to prove fraudulent conduct on the part of the board because that is a mental process, but I think that is not sound logic. I hope I do not do the gentleman injustice in stating that opinion that way. I do not want to state it for him and will let him state it for himself.

298 Mr. SMITH: Have you any allegation in your complaint that the attorney general acted fraudulently?

Mr. DYE: No, sir; none.

The COURT: In regard to the question before the court I will say that if this was as shown by the opinion, the general advice of the attorney general as to all matters or pertaining to a railroad matter, I should think as a fact, it would be proper to go in; but the reading of it convinces me that it appertained to a matter foreign to the taxation of railroad track and rolling stock, and it seems to me that under those considerations it would not be competent. The objection is sustained.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: I now offer to prove the proceedings of the State board of tax commissioners of Indiana of Tuesday, August 25th, 1891, at 2 o'clock p. m., as shown on page 36 and subsequent pages of the record of the proceedings of the Indiana State board of tax commissioners of 1891 as follows, to wit:

TUESDAY, *August* 25, 1891—2 p. m.

The board reconvened at 2 p. m. and went into executive session, with all the members present.

In response to a question submitted by the State board of tax commissioners to the attorney general, that official appeared and submitted a written opinion, which is as follows:

Hon. A. P. Hovey, chairman State board of tax commissioners, Indianapolis, Indiana:

You submit for my opinion the following question:

"Has the board of tax commissioners, under section 126 of the act of the General Assembly of Indiana, March 9, 1891, or any other section of that act, the constitutional right to fine or imprison for contempt?"

In an opinion rendered your board on the 7th day of August, 1891, on the subject of taxing bank deposits, I stated generally your powers and duties. It is not necessary to repeat here what I

299 then said, but a conclusion of it all is that in matters of discovering personal property and fixing its ownership for the purposes of taxation, you had the power to compel the production of books and papers for inspection, and the attendance of witnesses for examination before the board, and in case of disobedience, to enforce the orders of the board by summary fine and imprisonment as for contempt.

This authority is expressly given in sections 120, 123 and 129 of the act of March 6, 1891.

County boards of review, by provisions of section 114 of the same act, have the full power to enforce their orders by fine and imprisonment. The State board has conferred upon it, by express enactment, all the powers and duties of the local boards.

These sections of the statute, when construed together, mean but one thing, that this board is possessed with sufficient powers to enforce obedience to its orders and commands, and the authority to fine and imprison is among its enumerated powers. These are among the powers delegated to it by the legislature, and they are within the constitutional provision that "the General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of property, both real and personal. * * *"

The power of taxation is a legislative power. It is an incident of sovereignty, and is possessed by the government without being expressly conferred by the people. Without the power to assess and levy taxes there can be no government. The power to assess and levy taxes is the exercise of the strongest function of the government. It has no limitation except the one placed upon it by the constitution itself—"that the rate of taxation shall be uniform and equal." Therefore, in the exercise of the taxing powers the legislature may prescribe by law such tax tribunals possessed of such powers as may seem proper. The mode to be pursued and the means to be employed in enforcing this constitutional provision is wholly within the sovereign will of the legislature, and the rules prescribed by it must be followed, if constitutional government is to be perpetuated.

Individuals who are aggrieved by the requirements of the legislature have the right to carry their grievances to the courts
300 for settlement. But until this is done the tax officers of the State should exercise the powers delegated to them by legislative enactment.

Judge Cooley, in his work on taxation, speaking of the power of the legislature, says:

"Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes. And not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient."

The taxing power recognizes no trial by jury. The tribunals delegated with this authority must, in the very nature of things, dispense with long and tedious controversies. Their authority must be obeyed, and their powers enforced, and the legislature has prescribed summary punishment to be inflicted upon those who stand in disobedience of its orders. The genius of civil government is based upon this power and the comprehensiveness of its authority is the strength of our institutions.

The State board of tax commissioners is not a court. It is true it possesses quasi-judicial powers, but it is a commission created by the only constitutional authority that could create it, and possessed of the highest powers known to the government. It is even higher than the court, for in the exercise of the taxing power "the judiciary can afford no redress against even oppressive taxation so long as the legislature in imposing it shall keep within the limits of legislative authority and violate no express provisions of the constitution."

By the power you possess you may commit the injustice of taxing property so high that it would be in the nature of confiscation, and the courts could not afford redress so long as the rate remained "uniform and equal;" and from the wrong thus done there would be no appeal except to the people.

The power given this board to enforce obedience to its orders rests on the same bottom. It is constitutional, or not. If constitutional the court cannot restrain the exercise of the *of the* power. To discover property omitted from the tax duplicate and ascertain the name of the owner is one of the powers of your board. This necessarily carries with it the additional power to swear witnesses
301 and inspect books and papers in determining what property was omitted, its value and to whom it belongs. The authority to do this exists in the law and springs from the sovereign power; and wherein is it unconstitutional?

If it is unconstitutional, what provision of the constitution does it violate?

The fact is that those who write so eloquently about the authority of this board invading the judiciary have forgotten, in their zeal, that the legislature possesses all the taxing powers inherent in the State government, and that the power to assess and levy taxes is paramount to all others. Why is this great power invested in one branch of the State government if no authority exists to enforce it? If the legislature does not possess this power, where is it to be found?

The theory that these powers are judicial is not tenable, and the cases cited in support of it are not in point. Not one of these cases spring from the tax laws. No distinction is made by gentlemen between the powers possessed by tax commissioners and those exercised by ministerial officers, who, from the very nature of their positions, are stripped of all discretionary powers. It is your right to inquire into and revise the assessment of all property in the State, if in your judgment it has not been properly assessed. This could not be done if you had to resort to jury trials, or to the courts for authority to act in each specific case where objection was made.

In the ordinary way of trying cases in the courts, it would take five years to dispose of the controversies with the banks concerning their depositors. The State would be involved in endless litigation and at the same time kept out of the use of the taxes necessary to carry on the affairs of government. Confusion and anarchy would follow such a system, while the courts would sink beneath an unsurmountable load. The statement of the proposition is sufficient to show that there is no merit in such a claim. Civilized govern-

ment has a broader and stronger policy at its base. Taxation being essential to its perpetuity, the power to assess, levy and collect taxes has been vested in the legislatures of the States, and in Congress, and the mode of reaching property for taxation is delegated to revenue officers with summary processes to enforce the powers granted. The exercise of this power is not judicial but legislative, and is clearly constitutional. (Art. 10, sec. 1, of the constitution.)

302 The following cases relied upon by the banks are not authority in this controversy. They do not touch the question:

Shoults *vs.* McPheeters, 79 Ind. 373. This case decides that the legislature cannot confer powers upon a master commissioner to grant writs of *habeas corpus*, this power being judicial in character. The decision is right when applied to the proper case.

Gregory *vs.* State *ex rel.* Gudgel, 94 Ind. 384. This case decides that the clerk of the circuit court, being a ministerial officer, cannot exercise judicial functions. This is right, too.

The State *ex rel.* Hovey *vs.* Noble *et al.*, 118 Ind. 350. This case reiterates the old and familiar doctrine that the courts are exclusively invested by the Constitution with the whole judicial power of the State. This is fundamental and right.

But how do these cases control or limit the taxing powers of the State—a power which has no other limitation than the Constitution itself? And the Constitution has placed but one limitation on the power, that is, to provide by law that taxation shall be "uniform and equal." All other powers relating to taxation are lodged in the legislature without limitation.

The powers to enforce your orders by fine and imprisonment, and to deal summarily with all questions necessary to establish a "uniform and equal rate of taxation," is given you by statute. The power to give it is an incident of sovereignty, and is possessed by government without being expressly conferred by the people. It is a legislative power, and in Indiana it is expressly conferred upon that body by the paramount law. (Cooley on Taxation, 4; The State *vs.* Wood, 110 Ind. 82.)

Authorities to sustain this doctrine are numerous, but space forbids further citation. I will add that this doctrine has been affirmed by the Supreme Court of the United States. Veazie Bank *v.* Fenno, 8 Wall. 533, 548. Opinion by Chief Justice Chase, Cheeney *v.* Jones, 14 Fla. 587.

Contempt is a summary proceeding triable only by the tribunal whose authority has been defied or whose dignity has been insulted. The power to punish for contempt belongs to the judiciary, and it belongs as well to the State board of tax commissioners.

Most respectfully submitted,

A. G. SMITH,
Attorney General.

303 The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Mr. DYE: We now offer the proceedings of the board on Friday, August 28th, 1891, on pages 65 and subsequent pages, with reference to the equalization of the assessment of the counties in the State, extending to the end of page 67. There is something more on that same day that I do not care about.

Mr. KETCHAM: I think we are not objecting to that. I don't think it is very material, but we are not objecting.

The said proceedings of the board of tax commissioners *was* admitted in evidence, the same being in the words and figures following, to wit:

304 FRIDAY, *August* 28, 1891—2 p. m.

The board met pursuant to adjournment, all the members being present.

The State board of tax commissioners, having had under consideration the equalization of the assessments of the counties of the State, as reported by the auditors thereof to the auditor of state, it was ordered that the assessment of the lands and lots, and the improvements thereon, in the several counties of the State, be increased, decreased, or remain as reported to the auditor of state, as shown by the following table, viz:

Counties.	Average value of lands per acre, 1891.	Action of the board.
Adams	$20 09	Increase of 5 per cent. on lands.
Allen	23 07	No change.
Bartholomew	26 65	No change.
Benton	20 77	Increase of 5 per cent. on lands.
Blackford	19 45	No change.
Boone	27 38	No change.
Brown	4 02	No change.
Carroll	27 06	Decrease of 5 per cent. on lands.
Cass	24 37	No change.
Clark	12 79	Increase of 40 per cent. on lands.
Clay	19 79	No change.
Clinton	30 29	Decrease of 5 per cent. on lands.
Crawford	4 63	No change.
Daviess	17 54	No change.
Dearborn	16 89	No change.
Decatur	23 81	Increase of 5 per cent. on lands.
De Kalb	26 27	Decrease of 5 per cent. on lands.
Delaware	30 01	No change.
Dubois	7 89	No change.

Counties.	Average value of lands per acre, 1891.	Action of the board.
Elkhart	$23 23	No change.
Elkhart City		Decrease of 10 per cent. on lots.
Fayette	27 36	No change.
Floyd	22 13	Decrease of 20 per cent. on lands.
Fountain	22 96	Decrease of 5 per cent. on lands.
Franklin	15 48	No change.
Fulton	19 03	No change.
Gibson	22 08	Decrease of 10 per cent. on lands.
Grant	33 41	Decrease of 10 per cent. on lands.
Greene	12 13	No change.
Hamilton	36 98	Decrease of 10 per cent. on lands.
Hancock	29 21	No change.
Harrison	8 55	No change.
Hendricks	28 38	No change.
Henry	30 72	No change.
Howard	28 07	No change.
Huntington	23 40	No change.
Jackson	10 92	Increase of 5 per cent. on lands.
Jasper	7 38	Increase of 10 per cent. on lands.
Jay	15 33	Increase of 10 per cent. on lands.
Jefferson	11 31	Increase of 10 per cent. on lands.
Jennings	9 16	No change.
Johnson	29 26	No change.
Knox	15 34	Increase of 5 per cent. on lands.
Kosciusko	24 67	No change.
Lagrange	18 51	Increase of 10 per cent. on lands.
Lake	25 56	No change.
La Porte	17 13	Increase of 5 per cent. on lands.
Lawrence	9 62	Increase of 5 per cent. on lands.
Madison	34 42	Decrease of 10 per cent. on lands.
Marion	52 76	No change.
Marshall	20 72	No change.
Martin	6 07	No change.
Miami	25 34	No change.
Peru City		Increase of 10 per cent. on lots and improvements.
Monroe	9 07	Increase of 5 per cent. on lands.
Montgomery	27 43	No change.
Morgan	18 76	No change.
Newton	15 08	Decrease of 5 per cent. on lands.
Noble	27 40	Decrease of 10 per cent. on lands.

Counties.	Average value of lands per acre, 1891.	Action of the board.
Ohio	$15 66	No change.
Orange	6 68	No change.
Owen	10 13	No change.
Parke	21 25	No change.
Perry	3 95	Increase of 10 per cent. on lands.
Pike	12 62	No change.
Porter	14 58	Increase of 5 per cent. on lands.
Posey	18 71	Decrease of 10 per cent. on lands.
306 Pulaski	7 50	Increase of 5 per cent. on lands.
Putnam	23 12	No change.
Randolph	24 96	Increase of 10 per cent. on lands.
Ripley	10 77	Increase of 5 per cent. on lands.
Rush	34 36	No change.
Scott	8 86	No change.
Shelby	34 25	No change.
Spencer	10 90	No change.
St. Joseph	20 49	No change.
St. Joseph	----	Increase of 5 per cent. on improvements on lands.
Starke	4 75	No change.
Steuben	18 85	Increase of 5 per cent. on lands.
Sullivan	16 08	No change.
Switzerland	14 30	No change.
Tippecanoe	28 71	No change.
Tipton	27 21	No change.
Union	26 68	No change.
Vanderburgh	----	Not yet reported.
Vermillion	18 99	No change.
Vigo	23 97	Increase of 10 per cent. on lands, except in Honey Creek township.
Wabash	26 05	No change.
Warren	21 10	No change.
Warrick	11 71	No change.
Washington	8 96	Increase of 10 per cent. on lands.
Wayne	30 04	Increase of 5 per cent. on lands.
Richmond City	----	Increase of 5 per cent. on lots and improvements.
Wells	23 36	No change.
White	15 69	No change.
Whitley	27 40	Decrease of 10 per cent. on lands.

Commissioners Matthews and Henderson voted against increasing the assessment of Clark county 40 per cent. and Vigo county 10 per cent.

In the matter of the appeal of the Greenfield Natural Gas Company from the action of the county board of review of Hancock county, it was—

307 Mr. DYE: I now offer the proceedings of August 31st, 1891, Monday, found on page 70 of this same record, being the record of the board as to the action of the board with reference to the equalization of real estate.

Mr. KETCHAM: We object to that, may the court please. We do not think it is material.

The COURT: I think the record will show that the court has already passed on this very question. I will sustain the objection.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We offer to prove the record of August 31st, 1891, which is as follows, to wit:

MONDAY, *August* 31, 1891—2 p. m.

The board met pursuant to adjournment, all the members being present.

A committee of the Commercial Club, of Indianapolis, appeared, and through Wm. Fortune, secretary of said club, asked a reduction in the assessment of the city of Indianapolis, to equalize the same with other cities of the State. George Wolf, township assessor, opposed any reduction, claiming that the assessment was not more than 80 per cent. of the cash value. Commissioner Walker stated that a reduction should be made in justice to the city of Indianapolis, as, after a comparison with other cities, Indianapolis will pay from 10 to 15 per cent. more taxes than any other city in the State.

Thereupon the board adjourned until Tuesday, September 1, 1891, at 10 a. m.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOSEPH T. FANNING,
Secretary of the Board.

308 The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now, on page 77, we offer the record showing that there was a full board present on that day. I do not care about the bank account. I offer this much of it:

"INDIANAPOLIS, IND., TUESDAY, *September* 8, 1891—10 a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: Alvin P. Hovey, governor and chairman; Claude Matthews, secretary of state; J. O. Henderson, auditor of state; I. N. Walker and Josiah Gwinn, commissioners, and Joseph T. Fanning, deputy auditor of state and secretary of the board."

Then, omitting the matter of the assessment of the banks, I offer the record on page 80:

"The State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State, and the improvements on the right of way and in daily use by such railroads, was unanimously agreed upon and the same was ordered to be spread upon the record and to stand as the assessment of the railroad property denominated railroad track, rolling stock, and improvements on right of way for the year 1891, which assessment is in the words and figures, to wit," which is admitted in evidence.

Now I offer next all these tables, from page 81, beginning at the top, to page 218. That includes the tables in the equaliza-
309 tion of land also, and goes to the end of the proceedings of September 8th.

Mr. KETCHAM: Now, may the court please, we think it is immaterial as to what was the assessment of the Attica, Covington & Southern, the Baltimore & Ohio and Chicago, the Bedford & Bloomfield, the Belt Railroad of Indianapolis, the Cairo, Vincennes & Chicago, the Chicago & Erie, the Chicago & Calumet Terminal, the Chicago & Indiana Coal, &c., and even the Cincinnati, Hamilton & Indianapolis.

The COURT: I have that question under consideration and I will just hold this until I have made up my mind as to that return, except as to the certificate on page 213, in these words:

"Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

In arriving at the basis for the estimate of said values the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds, the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same;" which is now here admitted in evidence, the question of the admission of the remainder being held under advisement.

Mr. DYE: I am willing to pass this matter for the present, and examine Mr. Fanning. Let Mr. Fanning be sworn.

310 JOSEPH T. FANNING, a witness for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. You are a resident of Indianapolis and your name is Joseph T. Fanning, and what is your business?

A. Deputy auditor of state and secretary of the State board of tax commissioners.

2 Q. Have you with you the letter to the attorney general calling out that opinion of July 14th?

A. No, sir; there was no such letter.

3 Q. An opinion addressed to you—you remember the opinion, do you?

A. What was the date you said?

4 Q. I will give it to you in a moment if I have it here. It is dated July 13th. Look at that (showing witness), and read that note to it. The opinion has been offered in evidence, but it has not been determined yet whether it will be admitted or not. That says you call for it. It is signed by you as secretary of the State board. I want a copy of that letter if there is such.

Mr. SMITH: If there was such a letter I would have it; it would be in my office, not in his.

5 Q. But you write a letter to the attorney general to which this is the answer?

A. I have no recollection of it.

Mr. SMITH: I cannot say whether he did or not, but if he did the letter is in my possession. Perhaps it is destroyed. The truth is, that opinion was in response to a large number of letters.

311 6 Q. Have you a copy of the notice that you served upon the three C.'s & St. L. Railroad Company as to the day fixed for the hearing of their property, or the original notice?

A. I have no such copy.

7 Q. Do you know where it is?

A. I don't know of any such notice.

8 Q. Was any such notice ever given—any writing, I will ask you first?

A. I want to understand clearly what it is. Is it this notice that we served, telling them that their property would be assessed or to appear, or what is it?

9 Q. I will straighten you out on that. On page 5 of the record of the State board of tax commissioners I find the following:

"On motion of Mr. Henderson, the secretary was directed to notify the railroad companies and corporations that they will be heard on a certain date, and that the secretary designate the number to be heard each day."

A. Oh, yes. I had a printed form for that purpose and inserted the dates. I have copies of the form that was served on all the roads.

10 Q. Do you know what date was inserted for the hearing of the three C.'s & St. L. railway property—the date fixed at which it was to be heard? The date at which it was fixed here, was it not? You can look at the time it was heard and see. Turn to the 20th or 21st of August, page 31. Was that the date that you inserted in the notice?

A. Well, this is the only record that I have of it. This is a copy of the official record in the office.

312 11 Q. I ask if you recollect, by refreshing your memory, whether the 21st of August is the date which you inserted in that notice.

A. I do not recollect the date, but I take it, from the record, that it is.

12 Q. You notice, do you not, that they began hearing corporations on the 20th of August, 1891? It could not have been earlier than the 20th, could it? Look at page 5 again.

A. It was not earlier than the 20th.

13 Q. Now, could you furnish us a blank copy of the printed portion of the notice you served on the three C.'s & St. L.?

A. I am not certain. There may be some of the blank copies in our office?

14 Q. Will you look and see?

A. I will look, and if there is I will be glad to furnish it.

15 Q. Did you serve any other notice of any kind in writing upon the plaintiff, the three C.'s & St. L. Railway Company, during the session of the taxing board after August 3rd, before September 8th, besides the notice you have already spoken about?

A. I have no recollection of serving any other notice.

16 Q. You were secretary of this State board, you say?

A. Yes, sir.

17 Q. Were you present at the meeting of the board on the night of the 18th of August, when Mr. Van Vorhis was there?

A. Yes, sir.

18 Q. I find on the 18th of August, in that book, that the board adjourned at the usual hour until the next day or adjourned until the usual hour on the next day. What time in the day
313 was that adjournment made? Turn to the 18th of August.

A. Well, I do not recollect the hour, but it embraced all the business of the day. They frequently held night——

19 Q. I want the hour of the day as near as you can fix it; whether it was before 6 o'clock or after 6 o'clock.

Mr. KETCHAM: I insist that the witness shall have an opportunity to finish that answer.

The COURT: I do not think the answer is responsive to the question.

20 Q. I want to know what hour of the day by the clock, as near as you can remember, the board adjourned until the usual hour the next day. I do not expect you recollect accurately, but you can tell whether it was before 6 o'clock or after?

A. On this particular day?

21 Q. Yes, sir; that particular day.

A. Ten or eleven o'clock at night.

22 Q. They adjourned at 10 or 11 o'clock at night on that particular day?

A. Yes, sir.

23 Q. That adjournment. The board was in session until 10 or 11 at night, were they?

A. Yes, sir.

24 Q. All the members present?

A. My recollection is that Gov. Hovey was not present at the night session.

25 Q. Was he present in the afternoon session?

A. Yes.

26 Q. At what time did the day session close?

A. It is impossible for me to state the hour, but I suppose
314 it was between 5 and 6 o'clock. They took a recess for supper.

27 Q. And when they arose did they make any order with reference to meeting again at half past 7 or any time?

A. I do not find any order to that effect.

28 Q. I am asking you if any was made, not what you find.

Mr. KETCHAM: Look at page 8, Mr. Fanning.

Mr. DYE: I mean any order on that day, Mr. Ketcham.

Mr. KETCHAM: That is all right. Look at page 9.

Mr. DYE: One moment. Let me manage the examination of the witness. I am not asking about that. That is another thing. Let there be no confusion about it. We all know there was a previous order there.

29 Q. What I want to know is whether there was any order on the 18th of August that the board should meet again as a board after supper.

A. It was understood that they would meet after supper.

30 Q. I do not want what was understood. I want to know if there was anything said about that when the board arose in the afternoon or in the evening.

A. Yes; it was stated that they would meet again after supper, and Gov. Hovey asked to be excused from attendance that evening.

31 Q. Then that meeting on the night of the 18th of August was a meeting of the board in its official capacity, was it?

A. It was held for a specific purpose.

32 Q. Now, will you be kind enough, sir, to answer the question that was asked you. That meeting on the night of the 18th of August was a meeting of the board in its official capacity, was it?

A. Yes.

315 33 Q. And the adjournment which was made on the 18th of August, "The board thereupon adjourned until 10 a. m. to-morrow, August 19th, 1891," was made after Mr. Van Vorhis had been heard in the night session, was it?

A. Yes.

34 Q. Was the time of this board wholly occupied during the forty days it was in session, or not?

Mr. KETCHAM: We think that is immaterial, and object to it on that account. Whether they occupied all the time or three-quarters of the time or nine-tenths of the time or half of the time does not make any difference.

The court overruled the objection; to which ruling the defendant at the time excepted.

A. There was some adjournments—days that they were not in session during that time—which the record shows.

35 Q. How many days were there that the board was not in session?

A. I cannot answer that except by the record.

36 Q. The record shows that correctly?

A. Yes, sir.

37 Q. And the record shows correctly the number of days which were consumed in hearing the various railroad companies, does it, and the statements of counsel?

A. Yes, sir.

38 Q. The record shows that this assessment was made on the 8th day of September. How long after the 8th day of September was it before the action of the board taken on that day—the record of the assessment of railroad companies—was spread upon the record?

316 A. We commenced on it immediately and completed it before the 11th.

39 Q. How much before the 11th did you complete it?

A. We completed it on the 11th.

40 Q. That is the day of the adjournment?

A. Yes, sir.

41 Q. The board adjourned on the 11th, I believe?

A. Yes.

42 Q. Did you make the figures under the direction of the board setting down the sums against the various railroad companies after the valuation had been made by the board?

A. I did, but I had several assistants. I could not do it all alone; I directed it.

43 Q. Who were your assistants?

A. George E. Bingham, W. K. O'Connell, Metcalf & Johnson, Garber, Leonard Quill, Isaac Dunn.

44 Q. Anybody else?

A. Hattie Moore.

45 Q. Any more?

A. That is all I recollect now.

46 Q. Now, are the figures upon which this assessment was based in your possession?

A. Some of the figures are.

47 Q. Where are the figures that are in your possession? Are they here or at the state-house?

A. The figures that were given to me as secretary I brought here. Mr. Henderson had them; I presume they are still here; the only ones that I have.

48 Q. Are those the only figures you have in your possession?

A. Those are the only ones I had in my possession.

49 Q. Did you have any other figures besides these in your possession?

317 A. Oh, we had a great many figures, and memorandum figures from which I was to make my report, but they were not preserved at all.

50 Q. Did you do any mathematical work for the board in distributing values?

A. I did.

51 Q. Did you do any mathematical work in distributing values that had been fixed upon the Big Four property upon the various lines?

Mr. SMITH: I object to that, may the court please. I undertake to say that they cannot prove by this witness the mathematical processes any more than they can prove the mental processes by a member of the board or anybody else. Perhaps this witness himself could not go over the calculations, could not give us any information as to what they were, and cannot remember independent of the record that he had.

Mr. DYE: If your honor please, this is a grave question in this case. This complaint upon one of its branches in the fifth paragraph specifically alleges that this assessment was made in a certain way; that the valuation which was made of this Big Four property was the valuation of the whole property, including these stocks and bonds in other States, as your honor recollects, and that having made a valuation, including the valuation of property which they had no right to assess, they then distributed that unit of value, or that unit of value with some proper deductions, over the lines in Indiana. Can we prove that at all, or is it a thing that cannot be attacked?

The COURT: I will allow this testimony to go in and con-
318 sider it on my ruling in this case. I am not prepared now to say how I ought to rule, and I will deviate from my usual custom in this instance and permit the testimony to go in pending my ruling upon the objection.

A. I cannot answer that just directly without an explanation of my part in this work.

52 Q. You are not now asked for any explanation of your part of the work. You are asked whether you did any mathematical work in distributing values or not?

A. Not before the values were fixed by the board.

53 Q. Did you after the valuation had been fixed by the board?

A. I made the tables that are shown in our report.

54 Q. Did you do any mathematical work before the valuations were fixed by the board?

Mr. KETCHAM: He answered that he did not.

A. I did not. I answered that question.

55 Q. I find in the stenographer's notes in this volume the report of the proceedings of the State board of tax commissioners. You brought this here, did you?

A. Yes, sir.

56 Q. I find in this volume brought here by you the following entry on the 18th of August:

"The hour of 4 o'clock having arrived, the board, on motion, adjourned until Wednesday, August 18th, 1891, at 10 o'clock a. m."

Having called your attention to this entry, on page 411 of the stenographer's report of the proceedings of the State board of tax commissioners for the year 1891, I ask you if that refreshes your memory any as to the time when the board adjourned on the 18th of August or if you care to make any change in your evi-
319 dence upon that subject.

A. That closed the day so far as the stenographer was concerned. He was told it would not be necessary for him to attend the night session.

57 Q. I am not asking you as to the effect of it. I am asking you as to whether there was any order of adjournment until 10 o'clock a. m. the next day at 4 o'clock on the 18th, p. m.—on the 18th of August—or whether it was made after the hearing of Van Vorhis at the night session.

A. That report does not change my evidence on that same point that was answered a few moments ago.

58 Q. Did you leave out any other proceedings that occurred on the 18th day of August besides the appearance of Van Vorhis and his statements to the board? The record of the proceedings on the 18th day of August contains no allusion to the Van Vorhis meeting. Did you leave anything else out?

A. I have no recollection of leaving out anything else.

59 Q. On the 18th of August the record shows—does it or not?—the fact of the appearance of every person who appeared before the board and made any statements except Van Vorhis. Turn to page 23.

A. I cannot reply to that without explaining the manner in which orally statements were being made frequently to the board which the board did not require me to make a record of.

60 Q. That is not what I am asking you about. I am asking you whether this record upon this particular day did or did not show the appearances of the persons who appeared before the board except Van Vorhis. That is the question which you will have to answer directly. The gentlemen can cross-examine you
320 about it if they wish to and give you an opportunity to make any explanations that are proper. The question is whether a record was made or not; that is all.

Mr. KETCHAM: I submit, may the court please, that where the witness says that he cannot make an answer that would be a correct one without making an explanation he does not have to wait for a cross-examination, and he is not obliged to give an answer upon which and from which false inferences can be drawn unless he is cross-examined. He is not bound to presume that he will be cross-examined.

The COURT: If any explanation is necessary, he can make it.

Mr. DYE: Your honor rules that he must answer the question first and then make his explanation.

Mr. KETCHAM: His honor did not rule anything of the kind.

The COURT: He can make his explanation in connection with his answer. I decide that the witness may make a proper explanation so that he can make an intelligent answer.

A. Many parties appeared before the board and made oral statements of which the board did not require me to keep a record. I do not know how many may have appeared on this day.

61 Q. Did any of the clerks that you have named here as your assistants do any mathematical work before the final making up of the record of the assessment for the State board?

321 A. They did not.

62 Q. Who was on the State board in the year 1890—who constituted the State board of equalization?

Mr. KETCHAM: I am objecting to that.

Mr. DYE: I want to show that Gov. Hovey was on both boards.

Mr. SMITH: The witness was not secretary of the board in 1890, and the statute shows who were members of the State board of equalization.

Mr. DYE: The statute don't show who was governor.

Mr. SMITH: The court takes judicial notice of that.

Mr. DYE: It is admitted, then, that the court shall take judicial notice of who was governor of Indiana in 1890?

Mr. SMITH: Yes; I think that is right.

Cross-examination.

Questions by Mr. KETCHAM:

63 Q. You have no recollection at this time as to the form of the notice or what notice, if any, was sent out to the three C.'s & St. L. Railway Company. Is that correct?

A. I have no recollection as to the form. I know there was a notice sent out, and I may have a copy of it; I am not certain.

Mr. DYE: We will take occasion to ask you again if you can find that copy. If you can find it, please bring it down next Tuesday morning.

Witness excused.

322 Mr. DYE: Now, may the court please, I will resume the introduction of the parts of the proceedings of the Indiana State board of tax commissioners for the year 1891 which was suspended in order to proceed with the examination of Mr. Fanning, in order that he might get away. I offer *not* the certificate of Governor Hovey, addressed to the auditor of state, beginning on page 221 and concluding on page 222.

The said certificate was admitted in evidence, the same being in the words and figures following, to wit:

"Hon. J. O. Henderson, auditor of state:

It is hereby certified that the foregoing record, from page 116 to page 312, inclusive, is the true, full, and complete record of the pro-

ceedings of the State board of tax commissioners organized under the act entitled "An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency," approved March 6th, 1891, and that the same is a correct statement of the rates finally determined by said board to be added to or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board and the valuations made by said board for the year 1891.

ALVIN P. HOVEY,
Governor of Indiana and Chairman of the State Board of Tax Commissioners.

JOSEPH T. FANNING,
Deputy Auditor of State and Secretary of the State Board of Tax Commissioners."

323 Mr. DYE: I also offer in evidence the certificate of J. O. Henderson, auditor of state, on page 222.

The said certificate was admitted in evidence, the same being in the words and figures following, to wit:

"STATE OF INDIANA,
OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a true copy of the record of the proceedings of the State board of tax commissioners, and that the same contains a true copy of the actions of said board in fixing the assessments of the several corporations, firms, and individuals therein mentioned, and the orders of said board concerning the appeals taken from the orders of the several boards of review of the several counties of the State, and of the equalization of the assessments of the real property in the several counties of the State, and of the valuations and assessments of the railroad property denominated "railroad track," "rolling stock," and "improvements on right of way" located, used, and operated in the State of Indiana as fixed and valued by the State board of tax commissioners for the year 1891 and as certified to me by the chairman and secretary of said board on the 11th day of September, 1891.

In witness whereof I hereunto set my hand and affix my official seal, at the city of Indianapolis, this 11th day of September, 1891.

[SEAL.] J. O. HENDERSON,
Auditor of State."

Whereupon, the hour of 12 o'clock having arrived, the court took recess until 2 o'clock p. m.

324 2 O'CLOCK P. M.

The court met pursuant to adjournment.

Present: The same as before recess.

The hearing of the testimony was resumed.

D. H. WILES, a witness called for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. State your name.

A. D. H. Wiles.

2 Q. Where do you live?

A. 28 West Vermont street, in Indianapolis.

3 Q. Are you acquainted, Mr. Wiles, with the value of real estate, say, in the counties of Wayne, Henry, and Rush?

A. Well, I suppose I might say to a certain extent I am. I was raised in Henry county and did business there for 11 years after I was of age.

4 Q. Have you kept up your acquaintance with those counties since that time?

A. I have been engaged in mortgage loans for the last ten years, and I suppose I have loaned money in those towns or counties.

5 Q. Has it been a part of your duty to inform yourself as to the value of real estate in those counties?

A. Yes, sir; it was my whole duty in that case.

6 Q. Did you have opportunities for informing yourself as to what real estate was worth in those counties?

A. Well, I think I had. I was engaged some sixteen years in the wholesale grocery business here, and by that means I became acquainted with the bankers and merchants and leading men of those counties and towns and others.

325 7 Q. Have you made loans upon real estate in those counties?

A. Yes, sir.

8 Q. Did you investigate the values of lands upon which loans were made and in the vicinity?

A. Yes, sir.

9 Q. Were those loans confined to one of the counties or any of them?

A. All the counties and others.

10 Q. Do you know what the average cash value of real estate in Henry county was on the 1st of April, 1891?

A. I would have my opinion about that, you know, from the best information I could get. Henry county is a good county.

11 Q. What is the character of land in Henry county?

A. It is very good; it is excellent.

12 Q. Is it uniform, or is there much cheap land in the county?

A. Not much cheap land there; it is a good county; one of the best.

13 Q. I will ask you what was the average cash value of real estate in Henry county on the first day of April, 1891?

A. I would say $50. Some farms are worth a good deal more money than that.

14 Q. What is the average, taking the whole land in the county as a body of land?

A. I should think $50 would be a fair average.

15 Q. What would you say as to Rush county?

A. If any odds, it is somewhat better.

16 Q. Better than Henry?

A. It is fully as good, if not better.

17 Q. What would be the fair cash value of lands in Rush county on the first of April, 1891?

A. $50 would be very reasonable.

326 18 Q. What do you say as to Wayne?

A. In Wayne county there is a good deal of land; some land there not quite up to the average, although I am not hardly as well acquainted there as I am in Henry. I would say $45 to $50.

19 Q. Are you acquainted so well with the value in any other counties in the State or not?

A. Well, hardly.

Cross-examination.

Questions by WILLIAM A. KETCHAM:

20 Q. When was the last loan that you made in Henry county?

A. Probably three years ago, now; in that neighborhood.

21 Q. When was the last loan you made in Rush county?

A. There has not been much loaning made the last year or two.

22 Q. When was the last loan you made in Rush county?

A. Probably 2 years ago.

23 Q. I want your recollection as to when you made the last loan in Rush county.

A. Well, between 2 years and two and a half; in that neighborhood. I cannot tell without looking over my records.

24 Q. When was the last loan you made in Wayne county?

A. I have not made any there recently.

25 Q. When was the last one you made?

A. Well, I did make one there this year.

26 Q. Was it a farm loan you made in Wayne this year?

A. No, sir.

27 Q. When was the last loan you made in Wayne county on farm lands?

A. That must have been as much as 2 years ago or more; in that neighborhood.

327 28 Q. Now, in connection with that last loan you made in Wayne county, did you go over and look at the land?

A. I ought to go.

29 Q. Did you go look at the land in connection with that loan?

A. Yes, sir.

30 Q. Did you go look at the land in Rush county?

A. Yes, sir.

31 Q. Did you go look at the land in Henry county when you made this loan?

A. Yes, sir.

32 Q. Why did you go look at it?

A. To see what it was worth.

33 Q. You went there to see what it was worth?

A. Yes, sir.

34 Q. You made no loan in Henry or Rush or Wayne counties at any time without going over to see what it was worth?

A. Nor any other county. I never make a loan without I go to see the security.

35 Q. Did you go to look at land in Henry, Rush, or Wayne with reference to your testimony here?

A. No, sir.

36 Q. You knew them sufficiently without going to look at them?

A. I went to look at the value.

37 Q. I am talking about your testimony now as to the value of the land in these counties. You knew enough of the values to testify in regard to it without going to look at any of them, but when you made loans you always went and looked at them?

A. Yes, sir; and my opinion is made now from what I observed then.

38 Q. You had before that time made loans in Henry and
328 Rush and Wayne county, had you not, before the last ones?

A. Yes, sir.

39 Q. But you never made a loan on any land, as I understand you, in either Henry or Rush or Wayne without going and looking specifically at that particular property with reference to that land?

A. Yes, sir.

40 Q. But you come now and testify to values without looking at the land at all?

A. I have looked at land, and am acquainted with land there.

41 Q. You have not looked at land with reference to or preparatory to your testimony?

A. No, sir.

42 Q. In other words, you have not been quite as careful about your testimony as you were about loaning money?

A. Well, I am convinced that I gave correct values. I make up my mind that the land is worth that much from what I have known of it.

43 Q. But it is true that you come here to testify in regard to the values of the land in those three counties without making any further examination, whereas wherever you make any loans on it you make an examination to ascertain what it is worth?

A. I go and look at each specific farm whenever I get an appli-

cation for a loan on it. These loans have been varied over the county.

44 Q. Now, what was the last loan you made in Wayne county on farm lands—to whom was it made and on what land was it made?

A. I cannot give you the names of them.

45 Q. Give it to me, then, in Rush.

A. Well, I made quite a good many in Rush.

329 46 Q. The last one is what I am asking about.

A. I cannot give you that.

47 Q. Give me the last that you made in Henry county.

A. That I made to a man by the name of Moore, on the Moore land.

48 Q. How much of a loan was that?

A. $4,200, I believe.

49 Q. How much was there of the farm; how much was there behind it?

A. About 150 or 160 acres.

50 Q. Which was it?

A. I don't know now; it was in that neighborhood. I know they sold one-third of it and paid the loan off. I loaned it. William H. Coleman, in the city, was the man that furnished the money. I loaned it through Samuel Buell.

51 Q. What were the improvements worth?

A. Well, he had a pretty good farm-house and a pretty good frame barn worth probably $2,000.

52 Q. What was the entire farm worth, improvements and all?

A. I would put that land at $100 an acre, at least 15 or 16 thousand dollars.

53 Q. And you loaned $4,000 on it?

A. Yes, sir.

54 Q. Was that better or less than the average of Henry county?

A. Better than the average.

55 Q. Near to a city?

A. No.

56 Q. Near to a town?

A. A little bit of a place started upon the new road, the I., D. & W., in the northwestern part of Henry county.

57 Q. The estimate you have given here of the values of

330 the real estate in these counties is the result of your experience in making investigations in connection with the making of loans, I understand?

A. Yes, sir.

58 Q. How many loans have you made on farm land in Wayne county within the last five years?

A. I have not loaned much in Wayne county.

59 Q. How many loans have you made on lands in Wayne county in the last five years was the question.

A. That I cannot answer.

60 Q. Fifty?

A. Oh, no.

61 Q. Ten?
A. No.
62 Q. Three?
A. Oh, probably in that neighborhood; I don't know.
63 Q. Does that mean one or five?
A. Well, I don't think it would be five, because I said I have not loaned much in Wayne county.
64 Q. Does it mean one?
A. I suppose it might.
65 Q. Does it?
A. I don't answer that question, for I don't know.
66 Q. You don't know that you have made one loan in Wayne county in the last five years? How many loans have you made in Rush county in the last five years?
A. I suppose I made ten or fifteen.
67 Q. Which was it, ten or fifteen?
A. I tell you I don't know without looking at my books. I didn't come prepared in that line. I loaned money for Judge Hines here and William H. Coleman; furnished a good deal of money.
331 68 Q. How many loans have you made in Henry county in the last five years?
A. I cannot answer you that, either, directly.
69 Q. Answer it indirectly then.
A. Well, I cannot give you that directly or indirectly.
70 Q. Have you made ten loans there?
A. Well, I expect hardly that many.
71 Q. Five?
A. I presume I have.
72 Q. In any one of the instances where you made loans in Wayne or in Rush or in Henry county will you say to the court that you took your general knowledge of the real-estate values as a sufficient authority to justify you in making the loans?
A. Well, I would not make loans unless I was satisfied with the security.
73 Q. Didn't you go out and make an investigation in each instance wherever you made a loan to see as to that particular property?
A. Yes, sir.
74 Q. Did you in addition to that take the statements of anybody else, appraisements?
A. Sometimes I did.
75 Q. Didn't you usually?
A. No, sir; not for an individual man here in town I didn't, but I asked generally or talked with merchants that I was acquainted with or the bankers or some prominent men that I was acquainted with.
76 Q. But didn't you as a rule in making loans take appraisements or statements from adjacent property-holders as to the value of that particular piece of property and let it go with the
332 papers in connection with the loan. I do not ask if you didn't always do it, but didn't you usually do it.

A. Sometimes I did, and sometimes I did not.

77 Q. Didn't you usually do it?

A. When I loaned for a private individual here I didn't make that practice. Now, sometimes Judge Hines—he loaned for himself and for his brother, who lived in Brooklyn, New York, and died there, and sometimes for his sister-in-law there—on one or two occasions he sent his son with me when I asked for more money than would be furnished by farm corporations, and he went out to see the land, but I believe I never asked him to make a loan that he did not make.

78 Q. Did you loan the full value of the land?

A. No, sir.

79 Q. What proportion did you usually lend?

A. From 40 to 50 %.

80 Q. Was that of the land or of the land and improvements?

A. The improvements would be taken in for consideration, of course.

81 Q. Now, in estimating the values which you have given to farming land there, did you take that into consideration wholly, exclusive of improvements, or did you assume that there was fences, barns, and the ordinary farm improvements that are on land?

A. We loaned more money on a farm that has good houses and a barn and good fences and good roads about it, good access to the farm—where you can get to market.

82 Q. But in the estimate of values that you have given here of this lands in these three counties did you take into consideration the facts that the farms were fenced and that they had such
333 ordinary improvements as a farm would have, or do you mean to say this is the value without any reference to the improvements?

A. Well, good fences and good barns add to the value of it, of course.

83 Q. And you take that into consideration in your estimate of the value?

A. Yes, sir; certainly.

84 Q. What proportion of the amounts that you have named would you attribute to the land itself, and what proportion to the improvements?

A. So far as the land is concerned as a general thing it would be considered worth very near that much money without a very great deal of improvements—that is, so far as the amount is concerned—but a man would want a farm-house that a man could live in and well enough fenced to protect the crop.

84 Q. I understood you to say that you included in this estimate the fact that there were such improvements there as would be reasonably expected in connection with such farms. I want to know what in your estimate you included on account of the improvements and what on account of the land—not what somebody else would do, but what you did or what you do.

A. Oh, well, what the per cent. is I don't know. That would be according.

85 Q. That would depend in each individual case as to what the improvements were?

A. Yes, sir.

86 Q. You are assuming as to the farm lands out there that they are situated as the general run of farm land is and worth so much an acre, and in that you include the usual and ordinary run
334 of improvements as you see them on those farms. The class of improvements on the farm in Wayne, Rush, and Henry are a pretty good class of improvements, are they not, as a rule?

A. Some of them pretty fair.

87 Q. They are better than they are in Jasper, are they not?

A. I never was in Jasper.

88 Q. Have you been in Tipton?

A. Yes, sir.

89 Q. They are better than they are in Tipton, are they not?

A. Well, now, I have been a good deal over Tipton county. I presume in some places; I don't know about that; there are some very good improvements in Tipton. Tipton county is much better than it used to be.

90 Q. Is it not your opinion that the improvements on the farms in Wayne, Henry, and Rush are a good deal superior to the improvements generally on farming lands throughout the State?

A. Well, now, I hardly know how to answer that question fairly.

91 Q. Answer it unfairly then.

A. I don't want to answer it that way, either. I am not as well acquainted in other counties, so that I might do injustice.

92 Q. Do you know Hancock county?

A. To some extent.

93 Q. Are not the improvements in Rush better than they are in Hancock?

A. I think they are.

94 Q. Do you know Hamilton county?

A. Moderately well.

95 Q. Are not the improvements in Rush county better than they are in Hamilton?

335 A. Yes, sir.

96 Q. Do you know Marion county?

A. I believe I have been there.

97 Q. Are not the farm improvements in Rush county better than they are in Marion?

A. So far as I have seen.

98 Q. Are you acquainted with the farms in Montgomery county, Crawfordsville, and around there?

A. Some very good improvements there, I know.

99 Q. Are you acquainted in Hendricks county?

A. To a moderate extent.

100 Q. Are they not better in Rush county and Wayne than they are in Hendricks county?

A. As an average I presume they are.

101 Q. Are you acquainted in Morgan?

A. No, sir; I am not.

102 Q. Monroe?
A. No, sir.
103 Q. Putnam?
A. No, sir.
104 Q. Boone?
A. Well, not largely. I know a few farms in Boone and I know a few in Putnam.
105 Q. So far as you know in Boone and in Putnam, is it not true that the class of improvements is very much better in Rush and Wayne than it is in Boone and Putnam?

Mr. DYE: Considering the fact that I have not asked this witness anything about any of these counties, nothing except about Wayne, Rush, and Henry, I object to the question as not proper cross-examination.

336 Mr. KETCHAM: I will withdraw the question rather than argue it.

And further the witness saith not.

Mr. DYE: Now, may the court please, I have this voucher for the payment of these taxes, which I will read. I would like to make a statement under oath or not under oath, just as the gentlemen please, for I paid these checks.

Mr. SMITH: I do not think you need to be sworn.

Mr. DYE: On the 15th day of April, 1892, I delivered to the treasurer of Marion county, that being about the last day for the collection of spring taxes, a draft on George E. Russell, treasurer, Cleveland, Ohio, payable to the order of Victor M. Backus, treasurer of Marion county, for $17,300.03, and at the time I took from him a receipt. The check is as follows:

The Cleveland, Cincinnati, Chicago & St. Louis Railway Co.

$17,300.03. INDIANAPOLIS STATION, 4, 15, 1892.

Pay to the order of Victor M. Backus, treas. Marion county, seventeen thousand three hundred and .03 dollars for charges due R'y Co.

JOHN T. DYE, *Gen'l Att'y.*

To Geo. S. Russell, treas., Cleveland, O.

No. protest.

[Endorsed:] Commercial Nat'l bank. Paid. Apr. 21, 1892. V. M. Backus, treas. Pay Third National bank, Cincinnati, or order for collection for the Indianapolis National bank, Indianapolis, Ind. Edwin E. Rexford, cashier. Pay W. P. Johnson, cashier, or order for collection for account of Third National bank, Cincinnati, O. Wm. A. Lemmon, cashier.

And took the following receipt:

337 Treasurer's office, Marion county. V. M. Backus, treasurer.

INDIANAPOLIS, IND., 4, 15, 1892.

Rec'd of C., C., C. & St. L. R'y Co. $17,300 on account of taxes payable in 1892, paid under protest, as stated in vouchers accompanying draft, which are to be signed and forwarded to tr. C., C., C. & St. L.

V. M. BACKUS, *Tr.*

At the bottom of that receipt there is a letter which I wrote to the treasurer, which I suppose is immaterial, stating it would be several days before he got his vouchers. They were busy in the county treasurer's office. This is a voucher for the sum of money that is attached to the receipt signed by Victor M. Backus, treasurer; it is a receipt; it is called a voucher; it is a voucher to the treasurer and to the auditor; a receipt from Backus.

338 Transportation department.

The Cleveland, Cincinnati, Chicago & St. Louis Railway Company to V. M. Backus, treas. Marion county, Dr.

Post-office address: Indianapolis, Ind.

1892, April 18. To amount paid on taxes by the C., C., C. & St. L. *St. L.* R'y Company for the year 1891, payable in the year 1892, to be credited upon taxes due on "railroad track" and rolling stock for the year 1891. Said sum is paid under protest to avoid a levy, said company claiming there is no legal and valid assessment of its property denominated "railroad track" and rolling stock for the year 1891 under which any taxes are legally due and collectable in the year 1892, $13,453.59.

(Chicago, Ind'p'l's and St. Louis divs.)

Unpaid taxes.

App'd:
J. RAMSAY, JR., *G. M.*

E. CLAPP. I hereby accept the above amount as partial payment only.

Correct:
GEO. W. KITTREDGE,
Chief Engineer.

Audited:
P. A. HEWITT, *Auditor.*

Approved:
E. F. OSBORN, *Secretary.*

Received, April 18, 1892, of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to be credited on taxes payable in 1892, thirteen thousand four hundred and fifty-three $\frac{59}{100}$ dollars in full of the above acccount.
$14,453.59.
V. M. BACKUS, *Tr.*

Now, the receipt was given for $17,300.03. The sum, in addition to the amount shown in this voucher, is contained in other vouchers, some of which covered the Peoria & Eastern road, some of which covered other property than railroad track and rolling stock in Marion county. It was one gross sum, and the tax on all
339 the property of these divisions except railroad track and rolling stock has been fully paid. This payment by this particular voucher here of $13,453.59 is upon railroad track and rolling stock of the Chicago, Indianapolis & St. Louis divisions. I will also give the reporter the amount of taxes upon the duplicate for the year 1891.

Mr. KETCHAM: May the court please, we desire to carry out the suggestions made yesterday or the day before with reference to certain questions that were asked Mr. Matthews, to wit, questions 91, 92, 93, 94, 95, and 96. We think those questions are not proper, but we admit that they are very close to the line, and we desire, with the permission of the court, to withdraw the objections that we have heretofore interposed to those six questions.

Mr. DYE: We will consult about that and announce our conclusion later.

J. O. HENDERSON, a witness for the plaintiff, recalled, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

4 Q. Did the Indiana State taxing board have before it whilst it was engaged in considering the assessment of the properties of the Big Four the record of the assessment of the same properties made by the board of equalization of the State of Indiana for the year 1890?

Mr. KETCHAM: I am objecting to that for the reasons that we have heretofore given in objections to questions put to Mr. Matthews.

340 Mr. SMITH: If your honor please, there is a case in Illinois where it says if a later assessment is higher than a former assessment the presumption is that it was properly assessed and that the value has increased or that the first assessment was too low; that the former assessment undervalued it.

Mr. DANIELS: We want to submit the figures for what they show on their face. The books do hold that if an assessment is so exorbitantly increased as to appear to a fair-minded man to be outrageous that it is competent, and this evidence is offered in this case for that.

Mr. DYE: I will also state, if your honor please, that we propose to follow up this evidence by showing that the evidence made in 1890, when Governor Hovey was chairman of the State board of equalization, and without any change in the value or condition of the property or its connections or its local relations, without any change in any of the circumstances affecting its value, was increased

by this board as to the Cincinnati, La Fayette & Chicago line fourfold, as to the St. Louis division almost threefold, as to the Indianapolis division in about the same ratio as the Chicago division, the assessment for 1891 of the Cincinnati, La Fayette & Chicago having been—I haven't the book here and may not get the figures just right—having been $6,000 a mile and having been increased to $31,000 a mile on the main line; on the St. Louis division the assessment having been on the main line $11,000 a mile and having been increased to $27,800; on the Indianapolis division the
341 assessment having been increased from $11,000 per mile for main track to $28,000, and I do not remember the figures on the Chicago division, but about in the same proportion.

Mr. SMITH: The presumption is that those assessments of a year ago were all too low. That is the presumption of law.

The COURT: Both sides have read a great deal of law to the court, but outside of very few cases that I have had time to look at I have personally examined no one of the decisions that you have cited. I think I can retain the ordinary run of an argument of this kind fairly well, but I think it is almost impossible for me, sitting as I have done in this case and directly after the argument taking up a case where your company was defendant, where I was engaged for four days giving my whole attention to that—that is, the damage case of the Big Four—to have done any better than I have. Having had no chance to investigate these authorities, I do not claim to remember all those decisions, and if you read that decision I have forgotten it.

Mr. DYE: I think it is probable I have not done your honor justice in regard to our theory of the case. Of course a man is full of his own ideas and what he has been reading.

The COURT: I am here to try this case. I do not mean that any ruling that I have made in this case is prejudice on my part, or that I have in effect decided the case. If there has been any intimation of that kind I don't think there is occasion for it. I am try-
342 ing to rule upon the evidence as presented to me, and there are questions involved in this case, for instance, as to due process of law—I might refer to it just now—that will come up on the argument, and it seems to me to have been implied that I ought to have taken that into consideration in ruling on these questions of evidence. That question I have reserved for the argument that is to come up in this case, and I have, in ruling upon the admission of evidence, assumed that the court had jurisdiction, because those other matters were to come up and be argued as to jurisdiction, as to notice, as to due process of law, as I understand it, and I have gone on that theory in making my rulings. Now, I want you to have the fullest opportunity, and, if there is any case in point that you have read to the court in that argument that you think the court ought to recollect, just consider that the court has forgotten it and read that case to the court, because I want to be advised as to what your position is.

Mr. DYE: The difficulty about that is that just at this minute a man cannot go into an argument of that sort. I have not got the

books here and have not got my notes here. The question as to value, of course, I confess I thought that was competent evidence, and I had not prepared myself to discuss that upon the trial. The argument had been so protracted upon the demurrer.

The COURT: We will assume that the court has not retained any of that argument upon the demurrer.

Mr. DYE: I cannot argue it now without getting my books together and so forth. If your honor wants to hear argument upon that I will have to get my notes and authorities.

343 The COURT: I want that there shall be due process of law in this case and I want everybody to be heard. I attempted to take notes during the argument, but I was assured by counsel on both sides that I need not take notes; that a brief would be handed me on both sides and I would have plenty of time to examine the authorities. I gave it as close attention as I could. I think there was a hundred authorities thrown at me on a dozen different points, and I tried to retain them, and if I have not retained them I want you to be advised of that fact so that you can have the benefit of it, because I want to make rulings that I feel that I am right in.

Judge CLAYPOOL: May the court please, I have been cautiously working in this case to avoid error in the rejection or admission of testimony. I feel pretty sure this testimony is incompetent. This case Mr. Kern read, for while it simply discusses the question of the weight of the evidence, of course it is a strong point on our side in consideration of what would be the weight of such testimony if admitted. The question as to whether or not such testimony was allowable was not made, I consider, by the court at all. There was a case where the evidence had been allowed. It seems that in the year preceding the property was appraised for about one-half less. I supposed the evidence went in without objection. That condition being before the court, and then the condition of the value as appraised, which was in question, the court say, taking the two together they prove nothing; but the point I make is that it is a question of value. What is the property worth now? That is what

344 they want the evidence in for; and I say you cannot prove the value by proving what some other assessors appraised it at the year preceding, for if you can go to the year preceding, as suggested by Mr. Ketcham, you might go back two or three or any number of years. I say the evidence is not competent. It does not tend to prove value, it only tends to prove the action of another board or another body, and you cannot prove the value of property by proving how somebody else appraised it.

The COURT: I know that is your position, but Mr. Dye takes a different position and I want him to fortify his position with authorities. If the court is going to rule on that matter the court wants to do it in all the light that is possible to be obtained.

Mr. DYE: If this question could be carried over—it is the question of the case—we could argue it at any time your honor sees fit. I cannot do it right away; I could do it to-morrow, or any time your honor sees fit. I will go right straight now and get my notes and books and come back, if you prefer that I shall do so. I did not

come down here to argue this question this afternoon. Your honor objected, at one time, that I covered too much ground—that I did not stick close enough to the points at issue.

The COURT: But now I am right on this point; that is what I want your authorities upon.

Judge CLAYPOOL: If your honor please, admitting Mr. Dye's premises to be true, I don't think his evidence is competent.

345 Mr. DYE: The case covers such broad grounds, and there are so many grounds upon which the evidence we were offering is admissible, that it is difficult to keep within limits. I can occupy the time here now upon another question a little while, and probably some other things will come up.

The COURT: This question that I have been directing my attention to for the last half hour is the question that is before the court; it is the question that is in the case right now.

Mr. DYE: I will ask another question of Mr. Henderson.

5 Q. Do you know whether any notice of any kind was given to the Big Four Railroad Company or any information of any kind after the 8th day of September of the amount of assessment against it before the adjournment of the board on the 11th day of September?

Mr. SMITH: I think this is a good place to raise a question about due process of law. I object to that question. I do not think it is a question that under any phase of this case or any circumstances that might arise in it could be proven. The law fixes what due process of law is. I assert to Mr. Dye that no notice was required after the assessment was made, and I will argue that with him at any time. I put that proposition upon this ground. The law is well settled in Indiana. I can show your honor three cases directly upon that point by our own supreme court that where a corporation

346 is required to schedule its property to a taxing board and the statute makes that requirement and the law further provides for the meeting of that taxing board and the time and place and purpose of the meeting of the board is named in the law, that that is due process of law in the meaning of all laws relating to taxation, all statutes relating to taxation, and that doctrine has been affirmed by the decisions of every supreme court in the United States that ever had occasion to pass upon the question and by the Supreme Court of the United States.

Mr. DYE: In reference to that, if your honor please, if the evidence is material at all, or could be under any circumstances, I think your honor ought to hear it. It would take a day to argue the question suggested, and we haven't the authorities here.

The COURT: I do not want to be arbitrary about this matter if you want to debate the question.

Mr. DYE: The point is, there is no jury here, and if, as they say, it amounts to nothing, that is the end of it. The witness is here and he can answer and it will save the trouble of bringing him back again if your honor concludes that the question is a proper one to be answered and it cannot prejudice them if it is immaterial.

Mr. SMITH: We will keep the witness here for your benefit.

Mr. KERN: We do not care to have the record encumbered with improper testimony.

Mr. SMITH: We have had notice served upon us that this case was going to find its way by some sinuous route
347 to the Supreme Court of the United States, and that is sufficient warning and reason for us to see to it that nothing shall go into the record that is to go to the Supreme Court of the United States except what the law says is legitimate. We do not know what false interpretation might be put upon a record filled up with the heresies that Mr. Dye has been advocating all through this trial.

Mr. DYE: So far as that question is concerned, your honor, this is all I care to say about it. Now, your honor is familiar with the decision of Judge Mitchell, in 114th Indiana. You are also familiar with the general doctrines laid down in Cooley's excellent text book on the Constitution and the cases there cited. You have in Mr. Butler's brief all the cases on which I rely, set forth with ability and clearness, upon the subject of due process of law.

Now, I do not believe that I ought to be called upon to argue that at this juncture of the case. Further than that, I have got a printed brief of my own which I filed in Mr. Ketcham's case on due process of law, which I will hand your honor. I really believe that it would be easier for your honor to get at a ruling upon that subject, if you are going to decide it now before final argument, by going through the brief than it would to hear us talk, because I haven't the cases here and would have to go and get them.

The COURT: I have very distinct ideas about these matters that have been presented to me this afternoon. I do not want to hesitate in making any ruling, but I want gentlemen to be heard
348 to the fullest extent before I rule. To be consistent, I have an idea what my ruling would be if I was trying to be consistent, but if you think I ought to have further light before I rule upon this question I want to have it before I make my ruling.

Mr. DYE: I will give your honor all I desire to say upon the subject of introducing proof as to values. It goes to the whole question upon which your honor has said your mind is made up and upon which you invite me to say something. In pursuance of that invitation I call attention to page 784 of Cooley's second edition on the law of taxation and the cases cited by him without further talk about it or effort, because that states clearly the position I take: "Fraud—A tax founded on fraudulent assessment will be enjoined," &c.

That is all I care to read to your honor. I call your honor's attention to the case in 75th Illinois.. That is a leading case upon that subject. I understand that that case holds that the cases hold that an assessment itself may be so enormous that it will in the judgment of competent persons necessarily show a reckless disregard of duty.

Judge CLAYPOOL: That is what it said, but there was no such point involved.

The COURT. Is there anything in the facts in that case that would indicate that there was a purpose on the part of the board to disregard its duty?

That case is different from this case. In that case there was a demurrer on file which admitted all the facts charged in the bill. Here you are seeking to prove certain facts which are not ad-
349 mitted to be true. In that case the facts were all admitted to be true by the demurrer. In this case they are all denied.

Mr. SMITH: In that case, may it please the court, it was admitted to be true that six millions dollars that was outside the State was added to the value of the road inside the State. They went beyond their jurisdiction; therefore their assessment could not be upheld as to that. It is entirely unlike the case here.

The COURT: I will sustain the objection to both of those questions, Mr. Dye, and you can make your offer.

Mr. DYE: Let the reporter read the first question to Mr. Henderson.

The reporter read the question as follows: "Q. Did the Indiana taxing board have before it, whilst it was engaged in considering the assessment of the properties of the Big Four, the record of the assessment of the same properties made by the board of equalization of the State of Indiana of the year 1890?"

The COURT: Now, the court sustains the defendants' objection to that question.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: I now make the offer to prove that the State board of tax commissioners had before it, while it was considering the assessment of the properties of the Big Four Railroad Company, the assessment of the same properties by the State board of equalization in the year 1890, and that such assessment showed that the same properties were assessed in the case of the Cincinnati,
350 La Fayette & Chicago at less than one-third the amount assessed by the State taxing board, and in the case of the St. Louis division and the Chicago division at less than one-half the amount assessed by the State taxing board, and in the case of the Indianapolis division.

The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

Mr. DYE: Now, read the other question.

The reporter read the question as follows: "Q. Do you know whether any notice of any kind was given to the Big Four Railroad Company, or any information of any kind after the 8th day of September, of the amount of the assessment against it before the adjournment of the board on the 11th day of September?"

The COURT: The objection to that question is sustained.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We now offer to prove by this witness that no notice of any kind whatever was given to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company or to any officer or agent thereof of the assessment as made on the 8th day of September, 1891, before the final adjournment of said board.

The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

351 Mr. DYE: Now, we have been using the words three C.'s and St. L. and Big Four all along through the trial of this case. Let it be agreed that the three C.'s and St. L. and the Big Four mean the plaintiff.

Mr. SMITH: That is all right.

Mr. DYE: I will furnish you the amount of taxes still due me that are still claimed against us, and let them be incorporated so as to clear up these formal matters this evening.

Said amount of taxes still claimed against the plaintiff being as follows:

Treasurer's office, Marion county. V. M. Backus, treasurer.

INDIANAPOLIS, IND., *October* 17, 1892.

The amount of the taxes on the duplicate of Marion county for the year 1891, payable in 1892, charged against the C., C., C. & St. L. Railway Co., unpaid, are sixteen thousand six hundred & forty-eight & $\frac{75}{100}$ — ($16,648.75).

V. M. BACKUS, *Treasurer.*

Mr. DYE: There is another thing about your opinion of July 13th, that was offered in evidence at the outset of the case, that has not been passed upon; that is the franchise opinion. We offered to prove at the outset of the case the opinion of Mr. Smith sent to Mr. Fanning on the 13th day of July with reference to the authority of this board to tax franchises. The defendant made objection
352 and I said we would wait until we examined Mr. Fanning. I now renew the offer to introduce in evidence the opinion of the attorney general of the 13th of July, 1891, from Mr. Smith to the secretary of the State board of taxation.

Mr. KERN: We object to that for the reasons given in our objections to other questions that what Mr. Smith may have said to the board or how that operated upon the minds of the board is not competent.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: I will now offer to prove the opinion by the attorney general to the secretary of the State board of taxation of July 13th, and I will hand it to the reporter.

The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

353 Alonzo G. Smith, attorney general. Leon O. Bailey, deputy.

Office of the attorney general of Indiana.

JULY 13, 1891.

DEAR SIR—You submit the following interrogatories:

"Is the franchise of a corporation, organized under the laws of this State, taxable?

"Is the franchise of a corporation, organized under the laws of another State but doing business in this State, taxable? And if so, how should the tax officer proceed in fixing a proper valuation thereon and placing the same upon the tax duplicate?"

As stated in an opinion heretofore rendered, the law declares in express and unequivocal terms that the franchise of a corporation is subject to taxation, precisely the same as other personal property, and should be appraised at its real cash value.

It is provided in section twelve (12) of the act of 1891:

"All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation."

It is required by the terms of section twenty-five (25) that:

"Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property."

It is further required by clause eight (8) of section seventy-three (73) that every street-railroad, water-works, gas, manufacturing, mining, gravel-road, plank-road, savings-bank, insurance or other association incorporated under the laws of this State, shall deliver to the assessor the amount of its capital stock, setting forth particularly numerous facts, among which is the following:

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

354 In section seventy-four (74), following, it is provided that:

"The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations, in the manner provided in this act, etc. * * * But where the capital stock or any part thereof is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that it is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation, then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed."

It is clear from the language of the law that all franchises or privi-

leges enjoyed by persons or corporations shall be taxed. This is true of all franchises. Foreign corporations doing business in this State, under the law are compelled to pay taxes on their franchises, notwithstanding they are granted by other States.

So broad and plain indeed are the terms of the statute as to seemingly enjoin upon the tax officers of the State especial care in listing and appraising this large and valuable class of property, which has heretofore, in a great degree, escaped its share of the burden of taxation.

The word "franchise" has an adjudged meaning. Its scope has been fixed by the courts, and is held to be the granting of special privileges which do not belong to the citizens of the country generally, of common right. It is a privilege of a public nature, which cannot be exercised without a legislative grant. It contains an implied covenant on the part of the government not to invade rights vested, and on the part of the grantee to execute the provisions and powers prescribed in the grant. Although franchises may be, and frequently are, conferred on individuals, they are usually held by corporations created for the purpose of enjoying them. In general they constitute a protection and source of profit to aggregated capital.

355 The right to be a corporation is in itself a franchise. All the functions of a corporation, in the true legal sense, are franchises. The right to hold property in a corporate name, to sue and be sued in that capacity, to have and to use a corporate seal, to contract, the power of eminent domain, the limited degree of liability attaching to its stockholders, are all franchises or privileges which come with the power to incorporate. Formerly it was the custom in many States to grant special charters, but now in most of them this power has been destroyed by constitutional limitation.

It will be important in arriving at the value of a franchise to determine something of its general character. Under existing laws, which are general in their application, it has become customary for nearly every branch of trade and commerce to seek the advantages found in corporate privileges. Hence a great many establishments which are purely private in character are incorporated. These are concerns whose franchises have little, if any, value in excess of that which would be represented by their capital stock, and under the provisions of section seventy-four (74), above quoted, would be required to pay nothing in taxes, additional to those paid upon their tangible property and the value of stock issued.

Another class of corporations, however, which have duties to perform in which the public has an interest, are granted rights and privileges, extraordinary in character and of great value to their owners. Instances of these are found in railroad, street-car, gas, water-works, telegraph, telephone, express companies, sleeping-car companies and organizations of like character.

The internal affairs of such corporations are largely under the control of the State. They are public agents, as it were, performing a part of the sovereign prerogative which has been delegated to them. The fact that the property of such concerns may be owned

and the profits enjoyed by individual persons, does not change their public character. Because of this they are given to enjoy, and receive profits from, extraordinary grants which cannot be lawfully bestowed upon individual persons.

And though existing for the public good, these franchises are nevertheless possessed of value to their owners. Without them they could not exist at all. The statutory power conferred
356 upon a railroad company to condemn the property of private persons and appropriate it to its own use, is granted because of the relation it bears to the public. It nevertheless enables such corporations to push its way here and there through the country where profits are most promising, and to develop its enterprise where those not possessing such authority would be obstructed and defeated at the beginning. Such corporations are authorized by law to receive donations from the public, and towns, cities and counties given the right to donate money to them, and to tax the people to pay it. In return for this, the public merely demands efficient and safe service.

A gas or street-car company, as brought into existence, is enabled to become a legal entity through the grant of power by the State. Clothed with this statutory authority, they are enabled to make contracts, in which they will be protected by the courts, and by which they will derive large profits which they could not do as individuals. By this means, although not in law, yet in practice and effect, they are enabled to reap the advantages of exclusive and special rights. It is this extraordinary power, giving an enhanced value to its possessors, that the law demands shall be assessed as other personal property is assessed.

In arriving at the value of franchises, for example, those of railroad, express, telegraph, street-car, sleeping-car, and similar companies, the following is suggested as one method which may be adopted in reaching a fair conclusion: The extraordinary earning capacity of such concerns may reasonably be attributed to the unusual powers enjoyed by them in the way of franchises or special privileges. By estimating the amount of money invested in the business in this State, then ascertaining the earnings of such association for the year, less its purely current operating expenses, which should not include interest on mortgage debts, cost of improvements and the like, the dividends or profits which such investment pays will be easily arrived at.

Whatever this result shows in excess of the usual six or seven per cent. received by individual investors may be considered as indicating the value of the franchise of such institution. It is a matter of great concern that this subject should be well considered, as from railroads alone an important item of taxable property will be found which has hitherto largely escaped the attention of tax officers.
357 I desire to call especial attention to sleeping-car, express and telegraph companies which are generally organized under the laws of other States, but which are doing business in Indiana, and receiving the protection of our laws. The franchises owned by them should be assessed and put on the tax duplicate as

personal property. In performing this duty, too, there should be no hair-splitting against the interests of the State. While not true of all, it is an astonishing fact that many of these companies are seeking to take advantage of every legal technicality possible to evade and avoid paying even the paltry special tax imposed upon them by law. In one or two instances their audacity has led them to decline to pay anything whatever. Such conduct may well warrant future legislative action of a character most severe, and which will demonstrate once for all which is the more powerful, they or the State. Under the present law, however, strictly enforced, much will be added to our tax fund heretofore omitted.

Another class of foreign corporations which have and will practically escape taxation, unless they be brought within the law by these provisions, are what are known as loan and trust companies. The operations of some of these concerns reach into many millions, while there are a multitude of like character which do a large, but less extensive business. All these should be taxed upon their franchises. As non-resident money-lenders, they make the claim that their mortgage notes and securities cannot be taxed. If this be true, which I doubt, such institutions should not demur to their franchises being placed on the tax duplicate at liberal valuations.

The recent tax law enjoins upon those officers whose business it is to fix values, to see that property of the character under discussion shall no longer escape taxation.

Under section 120 of the law, nearly all the express duties of the State board of tax commissioners are, and we there find the following language:

"Fourth. Especially to see that all railroads and corporations of the State are assessed and taxed as provided by law."

And again:

"Twelfth. * * * * * That all revenue officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made."

358 The board is given full power to carry out every provision of the statute. They are enabled to examine witnesses, under oath, and have access to and power to order the production of books and papers in the hands of any person or corporation of the State. It is made a misdemeanor, punishable by heavy fine, for any person to disobey any subpœna or to refuse to testify when requested by such board. They are given power to impose both fine and imprisonment, and to punish for contempt. The right of appeal is given to the criminal court of Marion county.

Railroad property, in the main, is assessed by the State board of tax commissioners, and the duty of fixing the value of all franchises of such corporations is clearly enjoined upon those officers. The several county boards of review of the different counties of the State should observe with unusual care the requirements of the present law upon this subject. It will probably be found that franchises of important value, as heretofore, have been omitted by the assessors. It is their duty to see that they are listed for taxa-

tion. Although an important, it will not be an arduous duty, because, as above stated, those franchises which are apt to exceed in value the capital stock of corporations are usually confined to those of a quasi-public character.

From the foregoing it will appear that franchises, whether owned by corporations organized under the laws of this State, or by those organized under the laws of other States and doing business in this State, should be taxed, and that they should be placed upon the tax duplicate as other personal property.

Most respectfully submitted,

A. G. SMITH,
Attorney General.

Hon. Joseph T. Fanning, secretary State board tax commissioners, Indianapolis, Indiana.

359 Mr. DYE: Now, I believe there is a formal entry of the withdrawal of your objection to questions 91 to 96, inclusive, put to Mr. Matthews?

Mr. KETCHAM: Yes, sir; we have withdrawn our objection to questions 91 to 96, inclusive.

Mr. DYE: We withdraw questions from 92 to 96, inclusive, and ask the reporter to read question 91 to Mr. Matthews.

CLAUDE T. MATTHEWS, a witness for the plaintiff, recalled, testified as follows:

The reporter read question No. 91 as follows: "Did you or not, in assessing and fixing the value of the St. Louis division and of the Chicago division and of the leased and operated lines of the three C.'s and St. L. railway in the State of Indiana, place or add anything to the value of said lines by reason of the fact that it had a franchise?"

A. We did not; no, sir.

98 Q. What do you mean by franchise?

Mr. KERN: We object to that, may it please the court. Mr. Matthews has not used the word franchise. Mr. Dye asked Mr. Matthews if it included a franchise, and he says no. Now, Mr. Dye says, "What do you mean by a franchise?" If he desires any enlightenment on that let him explain to Mr. Matthews what he means by it.

The COURT: I suppose the witness would not be called upon to define a thing he did not consider.

360 99 Q. What did you understand the question addressed to you as to whether you placed or added any value to said lines by reason of the fact that it had a franchise to inquire for?

Mr. KETCHAM: We object to that, may the court please. The question, it seems to me, is clear. The witness has not, as I understand, asked the indulgence of the court to have it explained to him, and this is not a cross-examination and we think the question is improper.

Mr. SMITH: Besides, I can bring the books here that contain definitions of the word franchise, books by several authors, and all of them vary a little.

Mr. DYE: That is the reason I asked the question, because it is an ambiguous word.

Mr. SMITH: You injected it into the case.

Mr. KETCHAM: We might have objected to the question on the ground that it was an ambiguous question or contained an ambiguous word. It would be an ambiguous question if it contained ambiguous words.

Mr. DYE: The ambiguity consists in the fact that a layman understands it to be one thing and a lawyer another.

Mr. KETCHAM: Mr. Dye wants to ask the witness a question and then, when the question is answered, to ask the witness what he understands the lawyer to mean by the question. I submit that is not a proper course of proceeding in court. If the lawyer
361 thinks the witness has not understood properly his question he can frame the question, either up or down, to the level of the intelligence of the witness as he understands that level to be, but I do not think he ought to be permitted to cross-examine his own witness.

The COURT: I think the objection is well taken.

To which ruling the plaintiff at the time excepted.

100 Q. Do you or not, in assessing the value of the St. Louis division and of the Chicago division and of the leased and operated lines of the three C.'s and St. L. Railway Company in the State of Indiana, place or add anything to the value of said lines on account of the good will of said company?

Mr. KERN: We object to that question for the reason that there is no allegation in the complaint on that subject.

Mr. KETCHAM: Let's let him answer it.

Mr. KERN: Let him answer it then.

Mr. KETCHAM: I don't think we want to object to that.

Mr. KERN: There is no meaning to the question.

The COURT: He may answer the question.

A. Neither through good will nor bad will.

101 Q. What was the average value of farm lands in the State of Indiana with reference to the amount at which they were equalized by the board in the year 1891?

362 Mr. SMITH: I object to that, may the court please, for the reason that record shows that fact. So far as the record can show a thing of that kind it is shown by the record of the board, but I undertake to say that neither the record shows the average value all over the State nor can any witness be found of sufficiently comprehensive mind on that subject to state the amount unless he would put it all into a pool and divide it up by the acres.

Mr. KETCHAM: It cannot be done. The actual value of all the farm land cannot be obtained from any record. It is an impossibility.

Mr. SMITH: In this connection the statute authorizes the manner in which the land shall be equalized; that it shall be equalized as between counties. You take a block of the State that is perhaps, in the judgment of man, of about the same value and equalize the value of that block, one county with reference to another, taking the same class of land. They take the strip of land south of the O. & M. railway and next to the Ohio river. That is nearly all one class of land. They cannot take that and equalize it with land up here in central Indiana, where the land is better and richer, worth more, and the improvements are of a higher grade. They cannot equalize the counties here with reference to the counties in northern Indiana, where the land is still better. Nobody ever heard of the equalization of lands in the State of Indiana, one acre with another, so that every man would pay on the same valuation.

363 And the law further provides, your honor, that the first equalizing body is the board of review, and that board equalizes between townships and parts of townships. This question involves a facetious mathematical proposition.

The COURT: I will sustain the objection.

To which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by the witness upon the stand, who is a member of the State board of tax commissioners, that on August 28th, 1891, when the real estate was equalized, when the farm lands were equalized, and also on the 8th of September, when the railroads were equalized, that the value at which the farm lands were assessed and equalized did not exceed seventy-five per cent. of the cash value of such farm lands on the 1st day of April, 1891.

The court sustained the objection of the defendant to the testimony offered; to which ruling the plaintiff at the time excepted.

Cross-examination (MATTHEWS).

Questions by WILLIAM A. KETCHAM, Esq.:

102 Q. Mr. Dye asked you whether there was any person, whether sworn or not sworn, appearing before the board with regard to the values of the property of the three C.'s and St. L. railroad. I will ask you if Mr. Dye, the general attorney of the three C.'s and St. L. railroad, was not before the board explaining to the board the various theories upon which and the reasons and the facts upon which the board should make an assessment of the property of the three C.'s & St. L.

364 Mr. DYE: We introduced the record of the board, may the court please, which shows that I was there and when I was there and what I said. That has all been put down in the record of the board. Therefore I interpose an objection to this question; it certainly is not cross-examination.

Mr. KETCHAM: Mr. Dye himself asked this witness if there was any person before the board, whether sworn or not sworn, with reference to the three C.'s and St. L.

Mr. DYE: I object to that because it asks what was said. The record has already been introduced of what was said, and what we asked him in our question was whether there was any witness examined, under oath or otherwise, by the State board of tax commissioners as to the character, condition, and value of the railroad track of any of the lines above named.

Mr. KETCHAM: We submit that this question is proper cross-examination on the question asked by Mr. Dye.

The court sustained the objection.

103 Q. I will ask you if Mr. Dye was there on behalf of the three C.'s and St. L. before the board during the session of the board and before the board had arrived at a valuation.

Mr. DYE: I object to that because the record shows that I was there on the day fixed by the board, the 21st of August.

365 The court overruled the objection; to which ruling the plaintiff at the time excepted.

A. Mr. Dye was there.

104 Q. Was he there representing the three C.'s and St. L.?

A. He was.

105 Q. You may tell the court whether he was before the board making statements in regard to the value of the railroad track and rolling stock of the three C.'s and St. L.

A. He did; he made statements of that character to us.

106 Q. The board was in session at the time when he was there?

A. At that time the board was in session.

Re-examination.

Questions by JOHN T. DYE, Esq.:

107 Q. I was there on the 21st of August, was I not?

A. Without referring to the record I cannot exactly state the day. I presume that is when it was; yes, sir.

108 Q. Refer to the record and state whether the time that I was there was the same time that is set forth on that page 31 of the record?

A. Yes, sir.

109 Q. That is the time you are testifying about?

A. Yes, sir; that is the time.

Recross-examination.

Questions by Mr. KETCHAM:

110 Q. Were there any other persons before the board representing the Big Four besides Mr. Dye, officers or agents?

A. I would not like to state positively that there was.

111 Q. Was Mr. Moses there?

A. I don't remember the name.

366 112 Q. With reference to rolling stock?

A. My impression was, if you will allow me to give that as evidence, that there were others there, but I cannot positively state.

By Mr. DYE:

113 Q. Whoever was there was there at the same time, the appointed time—was there whilst I was there on the 21st of August?
A. Well, I can't state positively that they were there at the same day.
114 Q. That is your impression, is it not?
A. No; my impression is that they were there afterwards, but I would not like to state positively.
115 Q. You do not make any positive statement about that?
A. No; I could not.
116 Q. Was anybody before that board, after the 8th day of September, representing the three C's and St. L.?
A. No, sir.
117 Q. Was any notice given?
A. No, sir.

And further the witness saith not.

Whereupon, the hour of four o'clock and thirty minutes having arrived, the court adjourned until Tuesday, July 5th, 1892, at 9 o'clock a. m.

367 TUESDAY, *July 5th*, 1891—9 o'clock a. m.

The court met pursuant to adjournment.
Present: The same as on Friday.
The hearing of the evidence was resumed.

JOSEPH RAMSEY, JR., a witness for the plaintiff, being first duly sworn, testified as follows:

Examination-in-chief.

Questions by JOHN T. DYE, Esq.:

1 Q. Give the court your name.
A. Joseph Ramsey, Jr.
2 Q. What is your business?
A. General manager of the Big Four road.
3 Q. The plaintiff in this case?
A. The C., C., C. & St. L. Company.
4 Q. How long have you been connected with the plaintiff's road?
A. Since January 1st, 1890.
5 Q. Before that time had you been engaged in the railroad business?
A. From 1869. From January 1st, 1890, to June 1st, 1891, I was assistant to the president of the C., C., C. & St. L. Since that date to the present time general manager.
6 Q. Were you acquainted with the values of the lines owned and operated by the three C.'s & St. L. in the State of In-
368 diana on the 1st of April, 1891?
A. I was.
7 Q. Are you acquainted with the value of the lines owned and

operated by the plaintiff's road, the plaintiff company, in Indiana at the present time?

A. Yes, sir; I am acquainted with all the divisions and their different values.

8 Q. I will ask you if there has been any change—any material change—in the value of the railroad track of these various lines from April 1st, 1891, to the present time.

Mr. KETCHAM: We are objecting to that, may the court please. We think it is not material.

Mr. DYE: One object of that, may it please your honor, is to remove any objection that there might be to the evidence as to value that has been offered, inasmuch as the expert examination was made at a recent date.

The COURT: My recollection is that that question is in the record—that that question has been passed upon in the record.

Mr. DYE: We said when we offered that evidence that we would show there had been no change in the value. We now offer this evidence for that purpose and for any other purpose for which the evidence may be competent, but that is the purpose that is in my mind now.

The COURT: That may go in.

A. No, sir. The property has been maintained, but there is no material change.

9 Q. What was the cash value of the main track of the Indianapolis division of the Cleveland, Cincinnati, Chicago & St. Louis railroad in Indiana, considering it as a part of a railroad track from Indianapolis to Cleveland and taking into consideration all other conditions that would effect the cash value thereof, on the
369 first day of April, 1891—that is, the Indianapolis division?

Mr. KETCHAM: We are objecting to that. It is the same question asked the other witness.

The COURT: The objection is sustained.

To which ruling of the court the plaintiff at the time excepted.

Mr. DYE: We now offer to prove by this witness the cash value of the main track of the Indianapolis division of the Cleveland, Cincinnati, Chicago & St. Louis railway from Indianapolis to the Ohio State line as a part of the railroad track between Indianapolis and Cleveland, taking into consideration all the conditions that would effect its value, was $11,000 a mile.

The court sustained the defendants' objection to the testimony offered.

To which ruling the plaintiff at the time excepted.

10 Q. Mr. Ramsey, are you acquainted with the values of the various lines of the three C.'s and St. L. and property owned and operated by it in the State of Ohio?

A. Yes, sir.

11 Q. Are you acquainted with the earning capacity of these separate lines?

A. Yes, sir. You mean separate and distinct from the Indiana roads?

12 Q. Yes, sir.

A. Yes, sir.

13 Q. Do you know what the earning capacity of the line extending from Cincinnati to Cleveland was for the years 1890 and 1891 or is now as compared with the earning capacity of the Chicago division of the St. Louis division in the years 1890 or 1891?

Mr. SMITH: We object to that question.

370 Mr. DYE: This is merely preliminary as to his knowledge. I ask him if he knows. The object of this testimony is to show that the stocks which were considered by this board in arriving at an estimate of the basis of this assessment and which represented the value of these lines in Ohio represented a larger proportion of the value out of the State in proportion to mileage than they did in the State in proportion to mileage.

Mr. SMITH: The ground of my objection to that question is that it asks the witness to state his knowledge of one railroad line by instituting a comparison with another. I do not think we will object if he states of his own knowledge the value of any particular line, but to ask him to state his knowledge of a particular line with reference to another line over in Illinois, I think that is objectionable. I think all such questions which require a witness to answer by comparison are objectionable. If you will divide the question, I don't care.

Mr. DYE: I will stand by the question as asked.

The COURT: It is a preliminary question and the witness may answer it.

Mr. DYE: The question is whether you have knowledge of the values of the earning capacity of the lines in Indiana.

A. Yes, sir; I have.

14 Q. Will you state what was the earning capacity per mile for the years 1890 and 1891 of the line owned by the three C.'s & St. L. railway extending from Cincinnati to Cleveland, Ohio. What was the earning capacity of that line per mile?

Mr. DYE: I asked for its earning capacity, taking into consideration the amount of business that would naturally go over the line.

371 Mr. KETCHAM: We regard this as only a more vicious branch of the other question, and we therefore object to it as incompetent, irrelevant, and immaterial and not in anywise tending to sustain the allegations of the complaint. The only purpose is to lay down certain roads on which your honor might travel to a conclusion that this witness has undertaken to put to you directly as to the value of the property. I do not care to repeat the arguments on that question; the court has passed on that. This is simply an incidental way of arriving at that which, when offered directly, the court upon consideration held as incompetent. We insist upon the objection.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: The plaintiff offers to prove by this witness that the earning capacity of the railroad from Cleveland to Cincinnati was, for the Cleveland division, gross earnings, $16,400 per mile, and for the Cincinnati division $11,000 per mile at the time indicated in the question.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

15 Q. Now, I will ask you if you are acquainted with the earning capacity of the St. Louis division of the plaintiff's road during the years 1890 and 1891, extending from Indianapolis to Terre Haute or to the Illinois State line.

That is a preliminary question which I understand your honor has ruled he can answer.

A. I am acquainted with its earnings for that year, yes, sir.

Mr. KETCHAM: The question was not as to its earnings but as to its earning capacity.

372 16 Q. Are you acquainted with its earning capacity?

A. Yes.

17 Q. What was the earning capacity of the St. Louis division during the year 1890 and 1891, taking into consideration the business, passenger and freight, which would naturally flow over said road?

Mr. KETCHAM: We enter our objection to that.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: The plaintiff offers to prove by this witness that the St. Louis division of the plaintiff's road during the time mentioned had an earning capacity of about $8,000 per mile gross earnings, or of making about $8,000 per mile gross earnings.

The court sustained the defendants' objection to the testimony offered; to which ruling the plaintiff at the time excepted.

18 Q. What is the value of the terminal properties at Cincinnati, Columbus, and Cleveland, in the State of Ohio, owned by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and embraced in the values represented by the stocks of said company?

Mr. KETCHAM: We are objecting to that on the same grounds that we have heretofore urged and for the additional reason that the terminal facilities over in Ohio are not material here. We did not assess them and it is not material what their terminal facilities over in Ohio are. We are glad if they have plenty of them.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

373 Mr. DYE: We offer to prove by this witness that the terminal properties in Cincinnati, Columbus, and Cleveland in use by plaintiff's road in those cities and the value which is embraced in and represented by the stock of said company was, April 1st, 1891, six millions of dollars.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

19 Q. Do the bonds of the three C.'s and St. L. Railway Company resting upon the various lines of the three C.'s and St. L. Railway Company all cover the whole of its property, or are the bonds of different series, issued by the roads out of which the consolidated corporation was formed, and do they rest on separate lines?

Mr. KETCHAM: The defendant objects to that question because it is too involved to be understood, and for the reason that it is immaterial to the issues.

Mr. DYE: I made it leading so as to come at it directly. You are not objecting to the question because it is leading.

Mr. KETCHAM: I am not objecting to the question as leading now, but that it is entirely immaterial and irrelevant to the issues joined in this case whether the facts stated in that question are one way or the other; it is utterly incompetent.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove that the bonds of the plaintiff company were issued in different series by the different companies of which it was composed, and that those bonds rest upon separate lines, and not upon the whole property of the three C.'s & St. L.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

374 20 Q. Mr. Ramsey, how many of the bonds of the three C.'s & St. L. Railway Company rest upon property outside of the State of Indiana?

Mr. KETCHAM: That is objected to. That is a branch of the same question. It is objected to for the same reasons heretofore stated.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that of the bonds resting upon the various lines of the three C.'s & St. L. railway $26,000,424 (26,424,000) rest upon lines wholly without the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

21 Q. Do you know what per cent. of the gross earnings of the St. Louis division of the plaintiff's road are derived from interstate transportation or from transportation from points without the State

of Indiana to points within the State of Indiana, and from points in the State of Indiana to points without the State of Indiana, and from points in other States through the State of Indiana?

Mr. SMITH: I believe you said in your complaint that that could not be shown.

Mr. DYE: Do you object to the question?

Mr. SMITH: No; I have not objected and I don't think I shall.

A. I have knowledge of the general proportion of the business derived from the transportation of the road.

22 Q. Will you state to the court where the main portion of the business that passed over the St. Louis division comes from; 375 whether from points within the State or from points without the State?

Mr. KETCHAM: That we object to. We submit that it is not material or germane to the issues here.

Mr. DYE: It shows the business in which the road is engaged; that is the object of it.

Mr. KETCHAM: We think it is not material to this case what the answer to this question may be. It is simply a manner of getting out a thing in this witness' mind, and when he gets it out it don't make any difference so far as this case is concerned.

The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: The plaintiff offers to prove by this witness that of the business passing over the St. Louis division about 75% thereof comes from points or goes to points outside of the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

23 Q. Mr. Ramsey, what per cent. of the gross earnings of the St. Louis division, if you know, are derived from transportation from or to points outside of Indiana?

The defendant objected to the question on the ground and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: The plaintiff offers to prove by the witness that 80% of the gross earnings of the St. Louis division of the three C.'s & St. L. railway are derived from transportation from points without the State to points within the State, or from points within the State to points without the State, or from through business passing 376 through the State from points without to points without the State.

The defendant objected to the testimony offered; to which ruling the plaintiff at the time excepted.

24 Q. I ask you, Mr. Ramsey, what per cent. of the gross earnings of the Chicago division from La Fayette to the State line, near Lawrenceburgh, is derived from business coming from points with-

out the State to points within the State, or going from points within the State to points without the State, or going from points in one State to points in another through the State of Indiana.

The defendant objected to the question on the grounds and for the reasons heretofore stated. The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: The plaintiff offers to prove by this witness that between 70 and 75 % of the gross earnings of the Chicago division is derived from business from points without the State to points within the State, and from points within the State to points without the State, and from points in other States going through the State of Indiana.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

25 Q. What is the length of the line from Cincinnati, Ohio, to Cleveland, Ohio?

Mr. KETCHAM: I do not think your honor cares to know what that is in the first place, and in the next place I think your honor would take judicial notice of it if it was proper to inquire as to the length of the line; but it is not material, and we object to it.

377 The court sustained the objection; to which ruling the plaintiff at the time excepted.

Mr. DYE: We offer to prove by this witness that the Cincinnati division and the Cleveland division between Cincinnati and Cleveland are 304 miles long.

The court sustained the defendant's objection to the testimony offered; to which ruling the plaintiff at the time excepted.

26 Q. How does the plaintiff's road make connection north of La Fayette? How does it get to Templeton—over what line does it run?

A. Over the Lake Erie and Western railroad for eighteen miles.

27 Q. It has a contract——

Mr. KETCHAM: We don't care anything about that; we are objecting to that.

28 Q. How, then, does it get to the Illinois State line from Templeton?

A. Over the tracks of the C., L. & C.

29 Q. The Cincinnati, La Fayette and Chicago?

A. Yes, sir.

And further the witness saith not.

Mr. DYE: Now, gentlemen, I want to prove that there is standing upon the duplicate against the three C.'s & St. L. railway main track and rolling stock for the year 1891 the sum of $13,073.49, less $1,707.80, upon the second installment of land other than railroad track.

I believe we are through now with the exception of any matters we may have omitted.

Mr. SMITH: I want to ask you at this point, Mr. Dye, you withdrew a number of questions, to which we withdrew our objection, but we have not had the opportunity to have the whole
378 record before us, and may not know from recollection whether there may not be other questions in the record like those or not. You, perhaps, do know that. If you do I wish you would give us the benefit of your knowledge, because we want to withdraw——

Mr. DYE: I would hesitate very much to give you advice upon a question of that sort, because that is where our swords are sharpened and where we are fighting. I do not think the exact question you have withdrawn your objection to have been asked us elsewhere, but there are a number of other questions that are, to my mind, proper questions. I only ask proper questions.

Mr. SMITH: The evidence in this record is that you ask a good many improper questions.

Mr. KETCHAM: Because there may be something so close to the line we want the record to show just what has happened with reference to that. We have said during the progress of this trial to Mr. Dye that if he desired to ask Mr. Matthews whether they considered or whether they assessed values out of the State that we would not object to it. We ask that the record should show that at the time.

Mr. BEVERIDGE: And also franchises.

Mr. KETCHAM: Ordinarily there would be no reason where a question was withdrawn for the record showing the withdrawal of the question, but in view of the fact that there are questions that are very close along the line this record ought to show, and we ask that it shall show, that after certain questions had been asked by Mr. Dye, and rulings upon them, that on the morning when it happened we came in and formally notified Mr. Dye and the court
379 that we withdrew the objections to questions from 91 to 96, inclusive, and that Mr. Dye called for an answer to question 91 and then withdrew questions 92 to 96, inclusive, from witness. The record ought to show that.

Mr. DYE: The record does show that. The record shows just what happened. There is a good deal that will have to be eliminated here when we go to make up the record.

The COURT: If Mr. Garber has kept an accurate report of the trial, as I have no doubt he has, that is shown in the record now.

Mr. KETCHAM: If it is not shown in the record we insist that it shall be shown in the record.

Mr. DYE: Further than that, may it please your honor, I want to say that I gave my copy of the transcript, written out by Mr. Garber, covering this part of the case, to Mr. Smith, showing these questions and the numbers of them, and I got it Saturday and returned it to him Saturday afternoon and he has got it yet, and I am glad he has got it. I am not complaining; I am only saying

that now we have closed our evidence; we have discharged our witnesses; they are gone.

Mr. SMITH: Who are gone? Mr. Matthews has not gone.

Mr. DYE: And, further, I want to say that a case ought to be tried upon a single theory. We don't want any changes in the rulings, or objections to be made, after our case is closed. The questions which are withdrawn are shown by Mr. Garber's transcript. The questions to which objections are withdrawn and the questions that are withdrawn are shown by Mr. Garber's transcript, and we stand by the record as it has been made out, and our case is ended.

380 Mr. SMITH: Your case is not ended; not yet. I serve notice on you to that effect now. The transcript of the evidence of Mr. Matthews is in our hands. I forgot to bring it up here this morning. It was kindly furnished me by Mr. Dye, for which I publicly thank him.

Mr. DYE: You need not mind that.

Mr. SMITH: And acknowledge my grateful consideration to him for it. But I want to say now and desire it to go in the record that if there are other questions not in the long-hand transcript of the short-hand notes propounded to Mr. Matthews of a like character with those to which we withdrew our objections and which were afterwards withdrawn by the counsel who propounded them that we withdraw our objection to all such questions and consent that they may be answered by the witness. The questions which we desire to withdraw objections to are any questions in this record which tends to prove that the State board of tax commissioners valued property outside of the State of Indiana, valued stocks, common or preferred, or valued the bonds or franchises and included them as a part of railroad track and rolling stock in Indiana. Now, I don't know whether any such questions are left in the record or not. It is impossible for us to know without getting a copy of the whole record, but if there are such questions there is no doubt about our position. We consent that he may ask Mr. Claude Matthews or any member of the taxing board with reference to it, and we will have Mr. Matthews here immediately if Mr. Dye wants him.

Judge CLAYPOOL: And also whether they assessed franchises.

381 Mr. SMITH: I have stated that; and Mr. Matthews answered the question that they did not assess franchises.

Mr. DYE: I have already announced to the court that the evidence is closed so far as we are concerned. If the gentlemen want to take any action, if they want to withdraw objection to any particular question put to any particular witness, we are entitled to know it before the witnesses are gone. Your honor will notice that what they are talking about goes to the same point upon which your honor has excluded evidence just now from Mr. Ramsey. A case must be tried upon one theory, not upon one theory to-day and another to-morrow.

The COURT: I suppose there is a difference between Mr. Mat-

thews' relation to this case and Mr. Ramsey, Mr. Matthews being a member of the State board of taxation.

Mr. DYE. The testimony was addressed to the same question, and if it is competent to ask Mr. Matthews any questions or anybody else any questions as to what they considered it is competent for us to prove the value of the thing they considered, or whether they considered a thing that had any relation whatever to the property they were called upon to assess. The only thing that I have to say is that the evidence is closed, and any proposition of any sort that comes from the gentlemen after our evidence is closed must be entirely definite and explicit so that we can know exactly what we are doing. It must be the withdrawal of an objection to a particular question, according to number, or so that we can know what it is. It must be made certain. They cannot come in here after a week's trial and say, "We have had a lot of rulings that we don't care to stand upon, and we generally want to know of the gentlemen
382 whether any such questions are asked in the record."

The COURT: I think you are exactly right about that.

Mr. KETCHAM: That is true. We ought to indicate and we will indicate to Mr. Dye——

The COURT: If you want to withdraw an objection to any question it must be definitely stated, so that Mr. Dye can know what it is. I think there is no question about that. You cannot put into the record an offer generally that if there is anything in the record different from what you suppose there is you now withdraw it. That will not do.

Mr. DYE: We insist that they shall make no withdrawal after the evidence of the plaintiff is closed and his witnesses are gone.

Mr. KETCHAM: I think the better course would be for us to get the evidence at the attorney general's office and see if there are any questions that we wish to withdraw. The reporter says that all the questions put to Mr. Matthews are written out and in that transcript.

Mr. BEVERIDGE: The statement that the transcript that we have had furnished us contains all the questions which were put to Mr. Matthews effects to some extent the suggestion which I was about to make. I think we ought to have an opportunity to see whether it contains any questions similar to the ones to which we withdrew our objection, and if it does that we have the privilege of withdrawing our objection exactly as we did to the questions to which we did withdraw our objection; not that it is done after Mr. Dye has closed his case, but that it is done at the time and as of the time and a part of the transaction, a part of the original withdrawal, be-
383 cause we were laboring under a misconception. We were laboring under the idea that the record did not contain all of the questions, and so did not give it as careful an examination as we otherwise would have given it. In short, what we want to do is exactly a part of what we did then and would come in as a part of what we did then. It is merely an inadvertence of counsel; nothing more. There ought to be no question that is proper or competent excluded, and if there be an objection to such a question

in the record it ought not to be kept in the record merely on account of the inadvertence of counsel in examining the record at that time.

Mr. DYE: It is not indicated as yet, may it please your honor, that they have any objection that they wish to withdraw. I think this matter should go over until they find out whether they do want to withdraw anything.

The COURT: I suppose that will be the best plan.

Mr. DYE: But with the distinct understanding that I have done everything I could to enable the gentlemen to know what they want to do, and that my evidence is closed and this case has been tried so far as the plaintiff is concerned, and we do not propose to have any changes made in the bill of exceptions after the evidence is closed if there is any way to avoid it. We stand upon what has been done, and we except to everything that is hereafter to be done that in any way can effect the record which your honor has made.

Mr. BEVERIDGE: That is just what I was talking about—that if we should propose to withdraw the objection to any question whatever it will be as a part of our withdrawal which was made a few days ago. We did not then, as we think, carefully examine
384 the record. It was a mere matter of inadvertence, and this is a pure question of discretion with the court. The record should not show that the withdrawal was made now, after Mr. Dye's evidence is closed, but that it was withdrawn as a part of the withdrawal which we made at that time.

Mr. DYE: No, sir.

Mr. BEVERIDGE: As a matter of fact we did not think——

The COURT: There is nothing before the court.

The court ruled as follows on questions taken under advisement during the course of the trial:

Return of T. H. & I. Railroad.

The court sustains the objection to the introduction in evidence of the report of the Terre Haute and Indianapolis Railroad Company, made to the auditor of state and by him laid before the State board of tax commissioners at its session in the year 1891 (which return was offered in evidence on page — of this record); to which ruling of the court the plaintiff at the time excepts.

And the plaintiff now offers to prove and to introduce in evidence the said report made by the Terre Haute and Indianapolis Railway Company to the auditor of state on the — day of ——, 1891, and by said auditor of state submitted to the said board of tax commissioners during their session in the year 1891 as follows:

385 The T. H. and

386 Auditor's

(This blank to be filed with auditor

Annual Return of the Terre Haute and Indianapolis Railroad Com

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by as required of railroad companies,

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Vigo	106	13	1,860	30,063	16	14	96,840
Clay	306	55	3,060	2,144	13	81	82,860
Putnam	239	10	2,390	2,164	21	13	126,780
Hendricks	225	47	2,250	1,439	19	65	117,900
Marion	89	93	24,050	8,096	9	17	54,696
Totals in State	697	18	33,610	43,906	79	90	479,076

I. R. R. Co.

form.

of state between April 1 and June 1.)

pany to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
			22	01	23,200				151,963
			49	52	52,320				140,384
			7	18	7,500				138,834
			3	51	3,700				125,289
			15	61	16,500				103,342
			97	83	103,220				659,812

387 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1892, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	25	2,400	60,000 00
Locomotives, second class		20	1,200	24,000 00
Passenger cars, first class		17	1,200	20,400 00
Passenger cars, second class		10	750	7,500 00
Pay cars		1	1,000	1,000 00
Officers' cars		1	1,000	1,000 00
Sleeping cars				
Dining and drawing room cars				
Postal cars		5	900	4,500 00
Combination cars		2	750	1,500 00
Baggage, mail, or express cars		16	475	7,600 00
Box cars		278	150	41,700 00
Stock cars		48	150	7,200 00
Coal cars		1,008	130	131,040 00
Platform cars		166	115	19,090 00
Wrecking and camp cars		3	300	900 00
Ice and refrigerator cars		9	150	1,350 00
Fast-freight-line cars		85	125	10,625 00
Caboose cars		22	190	4,180 00
Tank or oil cars				
Pile-driving cars				
Push-cars		23	5	115 00
Hand cars		28	8	224 00
2 steam shovels and 1 paint car				1,500 00
Total listed value of rolling stock				345,424 00

Length of main track on which said rolling stock is used in Indiana	79 miles, 90 hund.
Length of main track on which said rolling stock is used elsewhere (describe such roads below)	— miles, — hund.
Total length of road	79 miles, 90 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.
—— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Pullman Palace Car Co.

Give name of express company doing business over your line. Adams Express Company.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. Wm. R. McKeen, Terre Haute, Indiana.

Give name and address of secretary of your company. Geo. E. Farrington, Terre Haute, Indiana.

Give name and address of gen'l manager of your company. Jno. G. Williams, Terre Haute, Indiana.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Wm. R. McKeen or Jno. G. Williams, Terre Haute, Indiana.

388 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1892, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 3,000 in main and 2,640 in side.
State length of time road has been built. 39 years.
State number miles of track laid with steel rail. 79.90.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 47.33.
State number miles of siding laid with iron rail. 50.52.
State weight of iron and steel rail used in main track and sidings. Main track, 70 and 60 lbs.; siding, 56 and 60 lbs.
State kind of "joints" or "chairs" used. Angle bars.
State proportion of ballast used on road: Rock, —; gravel, 79.90; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$1,988,150 00
Number of shares	39,763
Amount of capital stock paid up	1,988,150 00
Market value of stock per share	47 50
Actual value of stock per share	47 50

Indebtedness.

Amount of 1st-mortgage bonds	$1,600,000 00
Amount of 2d-mortgage bonds	600,000 00
Amount of — mortgage bonds	
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	3,137,250 13
Current expense for operating road	229,807 56
Total listed valuation of all tangible property in this State	

Earnings.

Gross earnings of entire road, as shown by last official report of company	$1,213,619 54
Net earnings of entire road, as shown by last official report of company	379,762 09
Gross earnings of miles of road within this State, as shown by last official report	1,213,619 54
Net earnings of miles of road within this State, as shown by last official report	379,762 09
Average annual net earnings per mile over entire line, as shown by last official report	4,752 96
Average annual gross earnings per mile over entire line, as shown by last official report	15,284 88

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

389 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water Company, Situated upon the "Right of Way"

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Clay	Van Buren	Harmony
		Knightsville
	Brazil	Brazil
	Posey	Staunton
		Cloverdale
	Sugar Ridge	Ashborough
Hendricks	Guilford	Plainfield
	Liberty	Cartersburg
		Clayton
		Summit
	Clay	Amo
		Coatsville
390 Marion		Indianapolis

No. 5.

Tanks, Other Buildings, Belonging to the Terre Haute and Indianapolis Railroad of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	16 x 45	Frame	23 years	200 00
Freight-house	20 x 50	"	23	125 00
Section "	16 x 24	"	11	125 00
Hand-car "	10 x 16	"	30	15 00
Depot	20 x 40	"	17	350 00
Coal-house	12 x 16	"	1	25 00
Depot	20 x 74	Brick	23	450 00
Baggage-room	18 x 20	Frame	13	75 00
Freight-house	24 x 50	"	17	125 00
Car & coal house	24 x 50	"	27	100 00
Water tank	24 x 34	"	18	175 00
Engine-house	34 x 124	"	19	185 00
3 watch-houses	6 x 8	"	7	15 00
Depot	20 x 38	"	30	75 00
Hand-car house	10 x 16	"	30	10 00
Passenger shed	12 x 18	"	3	15 00
Depot	14 x 20	"	4	75 00
Hand-car house	10 x 16	"	30	4 00
Total Clay county				2,144 00
Depot	16 x 45	Frame	23	100 00
Freight-house	20 x 50	"	37	50 00
Watch "	7 x 12	"	19	4 00
Water tank	20 ft. diam.	"	3	75 00
Freight-house	14 x 20	"	28	25 00
Depot	16 x 32	"	23	75 90
Section-house	16 x 32	"	26	75 00
Hand-car "	10 x 16	"	29	10 00
" "	10 x 16	"	29	10 00
Section "	16 x 38	"	27	75 00
Depot	16 x 45	"	23	100 00
Watch-house	8 x 12	"	8	5 00
Pump "	12 x 16	"	8	30 00
Water tank	16 x 16	"	13	70 00
Depot	16 x 45	"	21	100 00
Hand-car house	14 x 20	"	27	20 00
Depot	19 x 52	Brick	9	600 00
Coal-house				15 00
Total Hendricks county				1,429 00
Inspector's house	8 x 10	Frame	2 years	8 00
Office	44 x 62	Brick	25 "	3,500 00
Freight-house	62 x 355	"	25 "	
2 watch-house	7 x 7	Frame	8 "	12 00
Yard office		"	New	800 00
Oil-house	12 x 20	"	7 "	30 00
Water tank	20 ft. diam.	"	1 "	75 00
Carpenter shop	24 x 112.	"	21 "	50 00
Wood-shed	24 x 112	"	21 "	50 00
Coal "	24 x 96	"	21 "	30 00

Schedule No.

County.	Township.	Descri Name of station.
	Center	White River
		N. Indianapolis
	Wayne	Eagle Creek
		Bridgeport
Putnam	Marion	Fillmore
	Greencastle	Greencastle
	Washington	Junction
		Reelsville
391 Vigo	Lost Creek	Seelyville
	Harrison	Glendale
		Terre Haute

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Sand-house	16 x 24	Frame	21 years	20 00
Blacksmith shop	30 x 122	Brick	18 "	425 00
Engine-house	185 ft. diam.	"	20 "	2,750 00
Pump "	15 x 15	"	20 "	60 00
Car & tool house	14 x 20	Frame	6 "	40 00
Switch-house	8 x 8	"	2 "	8 00
Yard office	16 x 32	"	13 "	75 00
Watch-house	7 x 7	"	1 "	7 00
" "	7 x 12	"	19 "	4 00
Depot	16 x 32	"	23 "	70 00
Hand-car house	14 x 20	"	27 "	7 00
Section-house	16 x 50	"	26 "	75 00
Total Marion county				8,096 00
Hand-car house	14 x 20	Frame	28 "	20 00
Depot	14 x 20	"	30 "	75 00
Coal-house	12 x 16	"	1 "	15 00
Hand-car house	10 x 16	"	30 "	10 00
Coal-shed	18 x 70	"	23 "	70 00
Carpenter shop	24 x 32	"	23 "	50 00
Water tank	24 ft. diam.	"	8 "	100 00
" "	20 "	"	8 "	75 00
Depot	$20\frac{1}{2}$ x $52\frac{1}{2}$ L's 14 x 15	"	4 "	750 00
Coal-house	12 x 16	"	4 "	10 00
Hand-car house	12 x 16	"	4 "	10 00
Dwelling "				550 00
Depot	22 x 46 x 110	"	23 "	175 00
"	16 x 32	"	23 "	100 00
Pump-house	22 x 24	"	15 "	50 00
2 water tanks	16 ft. diam.	"	14 "	100 00
Hand-car house	10 x 16	"	30 "	4 00
Total Putnam county				2,164 00
Depot	16 x 40	Frame	3 years	275 00
Section-house	16 x 36	"	22 "	100 00
Hand-car "	14 x 20	"	22 "	15 00
Passenger shed	10 x 18	"	8 "	40 00
East yard office	14 x 20	"	4 "	75 00
Check "	8 x 9	"	4 "	10 00
Coach house	56 x 360	Brick	22 "	2,250 00
Paint shop	56 x 150	"	23 "	1,100 00
Coach "	35 x 160	Frame	27 "	475 00
Repair "	75 x 150	Brick	24 "	2,750 00
Car "	28 x 135	Frame	18 "	175 00
Dry-house	17 x 35	Brick	27 "	175 00
Office	28 x 28	"	12 "	325 00
Carpenter shop	60 x 210	"	22 "	3,400 00
Blacksmith "	84 x 124	"	22 "	1,400 00
Coal-shed	24 x 186	Frame	19 "	125 00
Wood "	24 x 160	"	24 "	75 00
Boiler shop	90 x 96	Brick	24 "	1,000 00
Machine "	100 x 168	"	22 "	2,200 00
Engine repair shop	54 x 120	"	23 "	1,500 00
Storehouse & office	36 x 120	"	22 "	1,400 00

Schedule No.

County.	Township.	Descri Name of station.

392 STATE OF INDIANA, } ss:
Vigo County, }

John G. Williams, general manager*, and Geo. E. Farrington, secretary, of the Terre Haute & Indianapolis Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railroad company which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

JOHN G. WILLIAMS,
*General Manager.**
GEO. E. FARRINGTON, *Sec'y.*

Subscribed and sworn to before me this 17th day of June, 1891.
† HOARCE M. SMITH,
Notary Public.

* General superintendent or general manager.
† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Engine-house	260 ft. diam.	Brick	21 years	5,000 00
Depot	60 x 60 / 60 x 80	"	27 "	2,500 00
Baggage-room	20 x 70 / 14 x 20	Frame	24 "	75 00
Mail-room	14 x 20	"	4 "	50 00
Ice-house	16 x 24	"	4 "	20 00
Freight-house	64 x 380	Brick	34 "	3,250 00
Office	54 x 78	"	34 "	
Switch-house	9 x 12	Frame		7 00
Line repairer's office	18 x 24	"	4 "	25 00
Oil-room	24 x 24	"	19 "	175 00
Tool-house	8 x 9	"		7 00
Hand-car house	14 x 20	"	27 "	10 00
2 street watch-house	8 x 8	"	2 "	14 00
4 " " "	7 x 7	"	3 to 8 years	20 00
6 " " "	8 x 9	"	17 "	30 00
1 bridge "				5 00
Tool "	14 x 20	"	26 "	10 00
Total Vigo county				30,063 00

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Terre Haute and Indianapolis Railroad Company, as required by section 85 of the tax law of 1891, for the year 1891, as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

[SEAL.] Witness my hand and official seal this 15th day of October, 1892.

J. O. HENDERSON,
Auditor of State.

[Endorsed:] Return of Terre Haute & Indianapolis Railroad Company. April 1, 1891. Received June 19th, 1891. J. O. Henderson, auditor of state.

393 Return of the Terre Haute & Indianapolis R. R. for the year 1891.
Filed Oct. 18, 1891.

JOHN R. WILSON, *Clerk.*

394 The defendants object to the evidence offered, and the court sustained the objection and excluded the evidence offered; to which ruling the plaintiff at the time excepts.

Argument of F. J. Van Vorhis.

The court also sustained the objection of the defendant- to the introduction in evidence of the statements of F. J. Van Vorhis made before the State board of tax commissioners on the night of August 18th, 1891 (which said statement was offered in evidence on page — of this record); to which ruling of the court the plaintiff at the time excepts.

And the plaintiff now offers in evidence the said statements of said Van Vorhis, as follows:

395 Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

An argument made August 18, 1891, for the board of commissioners of Marion county, before the State board of tax commissioners of Indiana, concerning the appraisement of railroad property for taxation.

Van Vorhis & Spencer, attorneys, 9, 13, 14, and 16 Thorpe block, Indianapolis.

Jacob A. Emrich, Joseph L. Hunter, Michael H. Farrell, commissioners.

396 Please read and hand to your neighbor.

397 The honorable the State board of tax commissioners:

GENTLEMEN:—In the course of our professional work it has become our duty during the last four or five years to represent the interests of Marion county before the State board of equalization, and we have asked this board to grant us such time as you might be able to give us (in the limited time allowed you by law) to present to you our views concerning certain questions relating to the taxation of railroad property.

Railroad property stands on exactly the same basis as the property of any individual. It is entitled to be treated in precisely the same way in the appraisement of it. The law of 1891 has not changed the basis of valuation of this or any other class of property subject to taxation. The "cash value," the "full, fair value," the "fair cash value," are the expressions of the old law, and the words "true value," used in the new law, do not change the meaning.

It has always been the law in this State that all property subject to taxation should be appraised at its full "fair cash value at voluntary sale," and this is its true value.

We insist that railroad property has not been assessed at anything like its true value; that the appraisement of it is absurdly low, as compared with other taxable property, and that the valuation has

for years been so low as to unjustly burden other tax-payers of the State.

We ask this board, organized under the law of '91, to give what we say a careful consideration.

We do not expect you to rely upon the statements made by the representatives of railroads, or upon statements that we may make, but that, using all as mere suggestions, you will, if possible, send for persons and papers, as provided by law, and determine for yourselves whether our statements are true or not.

398 There is no other way that such an investigation can be made. No other body or individual has the authority. If you do not do it no one else can. We regret that you find yourselves in much the same situation, so far as time is concerned, as the old board of equalization. Forty days is not sufficient without overwork.

Year after year we have appeared before the board of equalization, and we could not help feeling that it was a good deal of a farce. Under the circumstances it would not, and in the very nature of things it could not, make any investigation that deserved the name. In all the time we have been in attendance upon the board we never at any time heard anything introduced, by the representatives of any railroad, that by the widest and wildest stretch of imagination could be called evidence, upon which any tribunal could rightly predicate a finding of any kind.

The representatives of railroads were allowed to come before the board and make statements so general as to be utterly valueless. Often they confessed that they knew little about what they stated, except as they had received it second, third or even fourth hand.

We said last year, and we repeat it now, that the old board of equalization rarely had anything before it that enabled it — do anything more than guess at a valuation. And each preceding guess was the basis of each subsequent guess.

We have reason to expect that this board will take hold of this question in the manner provided by law, and proceed to possess itself of the information necessary for the proper performance of its duties.

An examination of the reports of the State board of equalization, from its organization to the enactment of the present law, will fail to disclose anything that gives the public the slightest idea as to how they arrived at their valuation of railroad property.

We have given enough attention to this subject to know that it is no easy task to collect facts in regard to any railroad system, necessary to the formation of an intelligent opinion concerning the value of its property.

399 Railroad business is a profession in itself, and requires a lifetime of attention and work to become perfectly familiar with it.

It can hardly be expected that we, working from the outside, acquiring information in the face of obstacles, and digging it out of reports that are prepared by experienced railroad men for the purpose of disclosing only such facts as may be profitable for them to

have the public know, and concealing everything else, will be able to get the exact truth; but we can come near enough to it to justify us in making some suggestions.

Railroad property is of two kinds—tangible and intangible. The tangible property of a railroad, by our law, is divided into four classes, two of which are to be valued and assessed by this board and two by the county authorities. Section 137 of the Law of 1891, provides that this board, in addition to its duties as a board of equalization, shall,

"Assess the railroad property denominated in this act as 'railroad track' and rolling stock at its true cash value, and said board is hereby given the power and authority, by committee or otherwise, to examine persons or papers."

Section 78 of the act defines "railroad track" as follows:

"Such right of way, including the superstructure, main, side or second track and turnouts, turn-tables, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation, and denominated 'railroad track,' and shall be so listed and valued, and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track and embracing the same together with all stations and improvements thereon," etc., etc.

Section 80 defines "rolling stock" as follows:

"The movable property belonging to the railroad company shall be held to be personal property, and denominated, for the purpose of taxation, 'rolling stock.'"

400 The other two classes consist of real estate not included in the definition of "railroad track," and personal property excluded by the exception in the definition of "railroad track," and not included in "rolling stock."

The law provides that the last two shall be assessed by the local authorities.

In this connection, gentlemen, we desire to call your attention particularly to the provisions of section 79 of the tax law.

This section and the following section provides that "railroad track" and "rolling stock" "shall be listed and taxed in the several counties, townships, cities and towns, in the proportion that the length of the main track in such county, township, city or town, bears to the whole length of the road in the State," with an exception.

We have each year claimed that the board of equalization did not give Marion county the full benefit of the exception. We insist that the interpretation that has heretofore been *b*ut upon the exception contained in section 79 is incorrect. The exception is as follows:

"Except the value of the side or second track, and all the turnouts, and all station-houses, depots, machine shops or other buildings

belonging to the road, which shall be taxed in the county, township, city or town in which the same are located."

Under this exception a part of the property to be valued and assessed by this board, is not to be divided between the counties in proportion to the length of main track in the county, but all the value of certain specific property is to be listed in, and all the taxes derived therefrom go to the county in which such property is situated.

It is very certain—there can be no reasonable question about it—that the value of all side or second tracks, and all turnouts and all station-houses, depots, machine shops and other buildings, belong to the counties in which they are situated.

Does this include the ground on which these structures, side
401 and second tracks and buildings are situated? We insist that it does, and that there is no doubt about it, if the Supreme Court is to be understood as meaning what it has said.

The board of equalization has never heretofore given the counties the benefit of any land on which depot buildings are situated. In a certain way they have assessed to the counties the side and second tracks, and the land on which they are situated, but have not done it correctly. What right have you been given by the statute to put all the side tracks along the line of a railroad together, and assess it at one value per mile, and then list that value to each county in which there is side track according to the side track in the county. That is doing precisely what the statute says you shall not do.

By this method, land in Marion county, worth from one to twenty thousand dollars per acre, occupied by side track, second track and turnouts, is assessed at the same value as land in other counties worth not over fifty dollars per acre.

The main track is to be assessed as a unit, and divided between the counties in proportion to the number of miles in each county, but this does not apply to side tracks or second tracks or turnouts or to improvements on right of way or land on which they are situated. The value of these must be assessed and the law says "shall be taxed in the county" in which the same is located. What authority does this give this board to list any part of the value of any side track, second track or turnout, or any building or improvement in Marion county, or the land on which they are situated, to any other county?

We call your attention to Pfaff, auditor, *et al. vs.* The T. H. & I. R. R. Co., 108 Ind. 150, where the court, after quoting the section of the old statute (6363), which is the same, word for word, as section 79 of the new statute, says:

"Thus the county, township, city or town gets its proportion of the taxes assessed upon the main line, and the whole of the taxes assessed upon the side tracks and turnouts, and the land on which they and other improvements are located in the county, township, city or town."

402 No attempt has been made by the board of equalization to give Marion county the benefit of the taxes to be derived from the very valuable real estate upon which depots and other buildings

are situated. The fact is, gentlemen, all the very valuable real estate situated in Marion county, that ought to be appraised under the exception contained in section 79, has practically escaped taxation.

It would not be so bad if other counties get the benefit of what we lose, but they do not.

A fair assessment of the property above mentioned will include all the tangible property of a railroad, but not all its property.

In "State Railroad Tax Cases," 92 U. S. 575, L. C. P. Co., book 23–669, Justice Miller said:

"That the franchise, capital stock, business and profits of all corporations are liable to taxation in the place where they do business, and by the statute which creates them, admits of no dispute at this day. 'Nothing can be more certain in legal decisions,' says this court in Soc. for Savings *vs.* Coite, 6 Wall. 607 (73 U. S. XVIII, 902), 'than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of a State government.' State freight tax case, 15 Wall. 232 (82 U. S. XXI, 146), State tax on gross receipts, 15 Wall. 284 (82 U. S. XXI, 164). But it has been a desideratum, perhaps not fully attained, to find a method of taxing this species of property which shall be at the same time just to the owners of it, equal and fair in its relations to taxes on other property, and which will enforce the just contribution that such property should pay for the benefits which, more than property generally, it receives at the hands of the Government."

Under the laws of Indiana this franchise or privilege is required to be listed and assessed as personal property.

"SEC. 25. Every franchise granted by any law of this State owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property."

403 There is no specific direction as to who shall assess the franchises and privileges of railroads; but that either the county authorities or this board of tax commissioners, or both, have that right, cannot be questioned.

Section 81 of the present law provides that:

"All personal property of any railroad, except that specifically taxed and including the tools and materials for repairs, machinery, fixtures, and stationary engines, shall be listed and assessed in the county, township, city or town, wherever the same may be, on the 1st day of April of each year."

Under the idea that franchises and privileges of railroad companies are personal property not specifically taxed, it seemed to us that the county authorities had a right to list and assess them in the county, and that the county was entitled to the benefit of all taxes derived from this source, and we endeavored to induce the county board of review to specifically list and assess this class of property, and let the courts settle the question as to whether it was right or not.

This proposition was energetically resisted by the attorneys for the Big Four combination and the Union Railway Co., of Indianapolis, and the Marion county board of review preferred (in view of an opinion of the attorney general, that it was the duty of this board,) not to make any assessment of railroad franchises and privileges.

Mr. Dye, attorney for the Big Four (Vanderbilt) combination, while refusing to express himself as to whether he thought the franchise of a railroad could be assessed at all, did, however, admit that if there was any authority in the State for assessing a railroad franchise, it was possessed by this board. In the opinion of the attorney general, it is the duty of the State board to fix the value of such franchises and privileges.

Whether the county board of review has such right or not, we do not question the correctness of that opinion, for if the county board has such right primarily, then this board has it by virtue of section 129 of the tax law of 1891, which provides that,

404 "The State board of tax commissioners is hereby given all the power given to county boards of review."

If county boards and assessors of the county do not have the right primarily, then this board must have it.

When it is determined that franchises and privileges are a part of the wealth of corporations and ought to bear its part of the taxes (a conclusion you cannot avoid), the next question that presents itself is how shall its values be determined?

Year after year we have heard objections made and difficulties suggested. There may be difficulties; there no doubt are, in collecting the facts necessary. You may find it impossible to make a valuation that you can feel certain is accurate, but you can approximate accuracy. When you have done so and have made your estimates as nearly correct as you can, not to do injustice to any railroad corporations in the State, you will add millions of dollars to the taxable property of the State.

We have heard, over and over again, the statement made that certain railroads in this State do not pay anything more than expenses, and therefore the franchises and privileges of such roads are valueless. The claim has been repeatedly made that because of low earnings railroad tangible property is not worth as much as the same property would be if used for other purposes; for, say the representatives of these corporations, their property can only be valued as railroad property.

Net earnings are very important in determining the value of railroad property as an entirety, but we have yet the first time to hear any railroad tax agent use them for any such purpose. Usually they are kept out of sight. When there are no net earnings, or it can be made to appear that there are none, they will be brought forward as a basis of an argument for low appraisement, not only of franchises and privileges but of tangible property.

We repeat what we said last year, that we do not believe

405 that the fact that a road earns less than its operating expenses furnishes any ground for assessing its tangible property at

less than the same kind of property in the same physical condition of a road earning more.

And it by no means follows that because a road earns less than its operating expenses its privileges and franchises have no value.

Net earnings always show a value up to a full measure on a given-interest basis. It can never be less than that, but it does not follow that it cannot be more. No difference what the gross earnings may be, the road may make its expenses, less or more, either by design or by the character of its management. The net rental receipts from a piece of real estate would show that its value, on a given-interest basis, could not be less than a certain sum, but the real value might be much more.

Justice Miller, of the Supreme Court of the United States, discusses this subject in the State railroad tax cases, to which we have already referred. These cases were appeals from the State of Illinois. One of the questions discussed was the assessment of the tangible property and franchises under the laws of the State of Illinois.

The law of the State of Indiana concerning the taxation of railroads is almost a literal copy of the Illinois law.

With your permission we will read from the decision of the United States Supreme Court, pronounced by Justice Miller, 92 U. S. 575, L. C. P. Co., B. 23, 670. The italics are ours:

"It will be assumed, for practical purposes, and it is perhaps absolutely true, that every railroad company in Illinois has a bonded indebtedness secured by one or more mortgages. The parties who deal in such mortgages are generally *keen* and *far-sighted* men, and most careful in their investments. Hence the value which these securities hold in market is one of the *truest criteria*, as far as it goes, of the value of the road as a security for the payment of these bonds.

"These mortgages are, however, liens on the road, and taking precedence of the shares of the stockholder, may or may not
406 extinguish the value of his shares. They must, in any event, affect that value to the exact amount of the aggregate debts, for all that goes to pay that debt and its interest diminishes *pro tanto* the dividend of the shareholder and the value of his share.

"It is therefore obvious, that when you have ascertained the current cash value of the whole funded debt, and current cash value of the entire number of shares, you have, by the action of those who, above all others, can best estimate it, ascertained the true cash value of the road, all its property, its capital stock and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock.

"This would of itself be, perhaps, the fairest basis of taxation for the State at large, if all railroads were solvent and paid the interest promptly of their funded debt. But this has never been the case in Illinois, and it is doubtful if this happy state of affairs is likely to prevail soon in that or any other State of the Union. If taxes were assessable *alone* on the value of the capital stock and franchises of the corporation, cases might be found where these

were worth nothing, and such companies would pay no tax, even for their real estate and personal property. And this is precisely the same argument of counsel for the Toledo, Peoria & Warsaw Railroad Company, in opposition to the law and to the rule of the board of equalization. But *individuals do not escape taxation on their real and personal property because they are insolvent.* In several of the States many men, in effect, pay tax on their lots or lands and on the mortgage which covers it and exceeds it in value, and on a large amount of personal property, while the mortgage debt exceeds in amount all that they are worth in the world. No State has ventured to establish the principle of permitting its visible, tangible property to escape taxation, relying solely on a tax imposed on the individual on the basis of his estimated wealth in excess of his debts.

"The system adopted by the State of Illinois, and the rule of the board of equalization, preserve this principle of taxing all the tangible property at its value, and taking the capital stock and franchise at their value, if there be any, after deducting the value of the tangible property. The case of the Toledo, Peoria & Warsaw Company, as we have said, is used as an illustration of the inequality which this rule works, and which counsel says is forbidden by the constitution of the State, thus rendering the tax assessed against it void. That company is insolvent and in the hands
407 of a receiver. It is unable to pay any interest on its bonds. Its capital stock is of no value, but the board of equalization assessed the capital stock and franchise at $2,003,415, and its tangible property at $2,629,367, thus assessing a property which pays but little, if anything, beyond its running expenses, at the sum of $4,632,782.

"*This sounds plausible, but it is nothing more.* Concede for the present that the capital stock is sunk and is of no value; concede that the funded debt of the company has at present no market value, or is unsalable, there remains what is valued as worth over $2,600,000 of real and personal property, which, like all other property of individuals or corporations, ought to pay its proportion of the public burdens. There also remains the *value of the franchise, which is not destroyed by the circumstance that the road does not pay interest on its debt.* Does anybody believe that this debt is of no value; that the holders of it attach no value to this franchise? Are they willing to give up the right to operate the road, to receive freights and fares, to endeavor to make it pay something more than the mere value of the personal property of the track, the depot, the grounds, the rolling stock and other tangible property? Is it supposed by any one that they intend or will ever sell these separately or apart from the right to use them as railroads? Why do not the bondholders sell all these things under their mortgage at auction as a man would sell town lots and household furniture, and horses and carriages? The reason is too clear to escape observation. It is because in the case of the railroad there is attached to all this property, and goes with it, a privilege, a right to use it through the whole extent of the richest counties in Illinois, in transporting per-

sons and property, in a manner which adds immensely to its value when considered as so much iron, so much land and so much personal property. By virtue of this privilege or franchise, this is all aggregated into a unit, well adapted to make money by its use in that way, with a chartered right to use it for that purpose.

"It is *this franchise* which the legislature of Illinois intended to tax, which it *had a right* to tax; and taxing it committed no injustice, if it was fairly assessed, though the corporation which holds it may be — *utterly bankrupt* that it must necessarily pass from it into other hands. In those hands, disembarrassed of its overweight of debt, who shall say that it is not worth $2,000,000? And who shall say that it is not the real value now of this franchise?"

408 Here, gentlemen, is a statement of a method by which you can determine the value of railroad property, tangible and intangible.

Section 85 of the present statute provides for a report to the State auditor of certain facts that indicate the purpose of the legislature to have brought to your attention certain facts intended to assist you in determining the value of not only tangible but intangible property.

The law requires all property to be listed and assessed at its true value, and it has seemed to us that railroad property, in the aggregate, ought to be worth per mile any sum on which it can be relied to pay continuously six per cent. per annum net.

It ought to be, and is, worth a sum equal to the value of its bonded indebtedness and the market value of its stock.

With a view of demonstrating that railroad property in Indiana has never been listed or assessed at any such sum, we submit some detailed estimates of the various roads in which Marion county is particularly interested. These estimates are made up from reports contained in Poor's Manual and reports made to the auditor of state, and the value is calculated upon a six per cent. net earning basis, and upon the basis of the value of bonds and stocks.

These estimates are similar to those we submitted to the board of equalization last year. During 1889 and 1890 a considerable change has taken place in railroad organizations in the State.

On the 27th day of June, 1889, the Cleveland, Columbus, Cincinnati & Indianapolis, the Cincinnati, Indianapolis, St. Louis & Chicago and the Indianapolis & St. Louis Railway Company consolidated and formed the Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Last year we submitted to the board of equalization estimates of these three corporations, of which the following are summaries:

409 Cleveland, Columbus, Cincinnati & Indianapolis railroad.

(See Poor's Manual for 1888, page 424; for 1889, page 409.)

Average annual net earnings per mile in 1887 and 1888	$3,404 00
Capital stock of this road	15,000,000 00
Lowest value in 1887, 47½	7,125,000 00

Funded debt, $10,460,000; lowest market value in 1887, 104½	$10,930,700 00
(In 1889 lowest was 130.)	
Total value of road	18,055,700 00
This road has 391 miles; value per mile on this basis	46,000 00
The entire assets of this road as appraised by this board last year, amounts to a value per mile of less than	18,000 00

A reference to market reports will show that there *was* bids for stock of the C., C., I. & St. L., on March 3, 1890:

Preferred	98
Common	69⅜

Cincinnati, Indianapolis, St. Louis & Chicago railroad.

(See Poor's Manual for 1888, page 407; for 1889, page 392.)

Average annual net earnings per mile in 1887 and 1888	$3,642 00
Value per mile on 6 per cent. average basis, 392 miles operated for 1887 and 1888	60,698 00
Capital stock, preferred, $10,000,000.	
Market value March 3, 1890, 98 per cent.	9,800,000 00
Capital stock, common, $3,000,000.	
All owned by company itself, and not in market. (Not counted.)	
410 Bonded debt at par	9,073,750 00
Value of road	$18,873,750 00
Value per mile on basis of market value of stock and bonds, over	62,000 00
The entire assets of this road appraised by the board last year amount to a value per mile of	13,000 00

Indianapolis & St. Louis railroad.

(See Poor's Manual for 1888, page 461; for 1889, page 459.)

Average annual net earnings per mile for 1887 and 1888	$1,828 00
Value per mile on 6 per cent. basis in 1887 and 1888	30,470 00

This report of net earnings of this road is for miles operated, which includes 193 miles of St. Louis, Alton & Terre Haute railroad (leased).

Capital stock of this road	$500,000 00
The bonded debt in 1887 was	2,500,000 00
And was increased in 1888 to	4,000,000 00
Bonded indebtedness per mile, about	50,000 00

One-half of this debt is represented by 6 per cent. gold bonds, due in 1912, and guaranteed by the C., C., C. & I. R. R. Co.

The entire assets of this road, as appraised by the State board last year, amounted to a value per mile of $12,200 00

The number of miles operated by the present Big Four system, during the first year of its existence, ending June 30, 1889, was 1,828, and the net earnings during the year were sufficient, on a six per cent. basis, to make every mile operated by this system equal to more than $35,000. (See Poor's Manual, 1890, pages 993 and 995.)

411 The Big Four has usually paid very little attention to the requirements of the statute to report value of stock, or net earnings per mile.

On the 11th day of July, 1890, eleven days after the close of the first year's business, the president, attorney, and tax agent appeared before the board of equalization and, according to the minutes, "made lengthy statements concerning the roads, and explained to the board as to the earnings and physical condition, etc., etc."

We did not hear the statements, but are informed that they were the usual statements about low earnings and bad physical condition. At any rate the board of equalization made a reduction of about $1,000 per mile in the valuation. The report this year to the board is like all the reports made by the Big Four—a work of art in the small amount of information disclosed. There are some things in it to which we desire to call your attention.

The number of miles operated is reported at 1,401, as against 1,828 of the year previous, as reported in Poor's Manual for 1890, page 993.

The gross earnings for the entire system for 1889 *was* $11,453,992, and for 1890 the gross earnings are reported to this board at $12,384,779. The gross earnings on 1,401 miles operated in 1890 amount to nearly $1,000,000 more than 1,828 miles in 1889.

The net earnings for 1889 *was* $3,859,820; for 1890 the net earnings are reported to this board at $1,482,977.

The expenses of 1,401 miles in 1890 *was* $3,837,630 more than 1,828 miles in 1889. In other words, the operating expenses in 1889 were a little over $4,000 per mile, and in 1890 nearly $8,000. Do you believe it? The report needs explanation.

And again; the report to this board shows total listed valuation of property in the State at $3,186,553, but they interline in their report the words "exclusive of rolling stock and personal property."

Why they thus change the printed blank is not explained.

412 Turn to the report of the board of equalization of last year and you will find that the total listed valuation of all property in the State is $4,973,920, while the reports to the board last year show that the gross earnings in the State are only about $250,000 less than the listed valuation of the entire road in the State. By a little calculation, you will find that the operating ex-

penses within the State are only one-half million dollars less than the entire listed valuation of all property in the State.

The stock of this company at face is $38,712,680. They report that they do not know the market value. If true, it is willful ignorance. The stock is listed on New York stock exchange, and they could easily learn if they desired to do so. They, however, report its actual value at $100 per share. This is its full face value, and they probably expect you to understand that the face value is what they mean. Their answer, however, is not far from correct, taken as it reads. The market value during the first six months in 1890, fluctuated a little below and a little above par. (Poor's Hand Book, 1890, page 60.)

We are informed that during 1891 the market value has been all the time above par.

Before this board adjourns we hope to be able to give you positive information of the value of this stock on April 1, 1891.

At par value, and exclusive of value of bonded indebtedness, every mile of the whole 1,401 miles of this system is worth $27,000.

The value of the various series of bonds, 1st, 7s. f., 1899, con's 7s., 1914, gen. con., 6s., 1934, all ranged during the first six months in 1890 at from 117¼ to 135.

On January 1, 1890, $5,000,000 of four per cent. bonds were issued on the Cairo division, due in 100 years, and these ranged during the same time at from 90 to 92.

The whole bonded debt reported to this board is $34,070,580, and the market value of this, at an average premium of twenty-
413 five per cent., is about $43,000,000, and alone exclusive of the stock value, makes every mile of road worth $30,000; or, if counted at par, the value is over $24,000.

Add these two together and you have the value of each mile of the Big Four, from $51,000 to $57,000. There *is* 546 miles of this road in Indiana, and at this valuation amounts to from $28,000,000 to $31,000,000. If you will remember that we have already shown you that the listed valuation of this entire system in Indiana is less than $5,000,000, according to the appraisement of last year, it will furnish you food for reflection.

We insist that the property of this system ought not to be assessed at less than $28,000,000.

In the name of right and common fairness, in the name of justice, in the name of the defrauded people, we ask you, by the power which the law of 1891 gives, to hold up this corporation in the broad light of day, so that the common people, who bear their part of the public burden, may be able to see, if such is true, how it is that the property of such a corporation can be worth from $35,000 to $60,000 per mile on a six per cent. earning basis, and on a basis of market value of stocks and bonds, and only worth $10,000 per mile for taxation.

The Peoria & Eastern Railway Company is a reorganization of the O., I. & W. R. R., and was included among the reports of the Big Four for last year. (Poor's Manual 1890, page 996.)

The value per mile, on a six per cent. earning basis, for 1887, was

$46,333, and for 1888 $1,625. This is a striking illustration of how earnings may disappear.

On July 11th, 1890, Mr. Ingalls and Mr. Dye made statements before the board regarding this road. We did not hear what they said, but it is perfectly safe for us to assert that they did not tell that in 1890, prior to the meeting of the board of equalization, the Big Four had put an estimate on this road that would have been, if reported, of more assistance in determining the "true value" than all other representations made.

414 On February 22, 1890, the road was reorganized, and there was issued $10,000,000 of consolidated four per cent. fifty-year first-mortgage bonds, $4,000,000 of four per cent. 100-year second-mortgage bonds, $3,325,000 of preferred and $10,000,000 common stock. The Big Four owns half the stock and all second mortgage, and has guaranteed the interest on the first-mortgage bonds. The road is leased to the Big Four until April 1, 1940.

Leaving out of consideration the second-mortgage bonds, and all stock, preferred and common, and consider the $7,325,000 as worthless, the road is worth, on the basis of the guaranteed bonds alone, over $28,000 per mile.

But the Big Four owns most of the stock, and it is not worthless; nor are the second-mortgage bonds worthless.

On March 30, 1890, the stock issued was worth: Preferred, 18 cents; common, 6½ cents.

A little calculation will show that including these values the road is worth over $45,000 per mile. This is very nearly the same valuation as that shown by the earning in 1887.

Last year the valuation was reduced $500 per mile, and the entire valuation per mile put at $8,500.

Surely this system ought not to be assessed at less than $28,000 per mile.

Neither the name of the Pennsylvania Company nor that of the Pennsylvania Railroad Company appear in the assessments of railroads in this State. These two organizations control a large amount of railroad property in Indiana.

The Pennsylvania Railroad Company is the principal. The Pennsylvania Company is but the hand by which the Pennsylvania Railroad Company operates the roads controlled by it west of Pittsburgh, while the roads east of Pittsburgh are operated by the principal.

The Pennsylvania Company has operated in Indiana a large number of roads, three of which run through Marion county:
415 the Chicago, St. Louis & Pittsburgh, the Jeffersonville, Madison & Indianapolis, and Indianapolis & Vincennes. A change has taken place in the organization, but we call attention to each of said roads as heretofore reported.

Chicago, St. Louis & Pittsburgh railroad.

(See Poor's Manual 1888, page 400; 1889, page 382; 1890, page 866.)

Average annual net earnings per mile for 1887, 1888 and 1889	$2,023 00
Value per mile on 6 per cent. basis	33,725 00
Capital stock (common), $9,105,901.00. Market value; lowest in first six months of 1890, 15½	1,395,885 00
Capital stock (preferred), $17,529,840.00. Market value; lowest in first six months of 1890, 43½	7,625,480 00
Funded debt, $19,584,300; lowest value in first six months of 1890, par	19,584,300 00
Total value of road	28,695,865 00
Value per mile on this basis, of every mile operated, over	40,000 00

This road owned 580 and operated 710.

The entire assets of this road *was* valued last year at $13,500 per mile.

Jeffersonville, Madison & Indianapolis railroad.

(Poor's Manual for 1888, page 468; 1889, page 430; 1890, page 840.)

Average annual net earnings per mile for three years	$1,811 35
Value per mile on 6 per cent. basis for three years	30,000 00
Net earnings per mile for 1889	2,267 00
Value per mile on 6 per cent. of this earning	37,784 00
Capital stock, $2,000,000. Market value, at par. Bonded debt, $4,938,000. Market value, at par. Value of this road on this basis	6,938,000 00

416 The bonded debt of this road is over $20,000 per mile.

The entire assets were appraised in 1889 at $12,500, and last year at $14,600 per mile.

The Pennsylvania Company, prior to the consolidation hereafter mentioned, operated this road under a lease. Under this lease the lessee was to pay all interest on bonds, provide a sinking fund for their redemption and pay over to the lessor all net earnings.

We ask you why the Pennsylvania Company should have been allowed to come before any board and by any kind of representations secure a valuation of $14,600 per mile, when the stockholders of the corporation really owning this road—the Pennsylvania Company itself being the owner of a majority of the stock—pockets an annual income on from $30,000 to $40,000 per mile?

Last year this entire road was valued for taxation at	$1,701,440 00
Net income for 1889	463,316 00

Or more than 27 per cent. of the valuation of the entire property.

The two roads just mentioned, the Chicago, St. Louis & Pittsburgh, the Jeffersonville, Madison & Indianapolis, drop out of the reports made to the auditor of state this year. In 1890 these roads consolidated with the Pittsburgh, Cincinnati & St. Louis railway and the Cincinnati & Richmond, and by this consolidation formed the—

Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

The report made to the auditor of state corresponds very closely to the report in Poor's Manual for 1891, page 874.

The whole number of miles reported is 1,145, of which 647 miles are in Indiana.

Paid-up stock reported, $43,820,650. It is also reported that the capital stock, common, is worth 15, and the preferred 51½ cents.

417 We have no information as to what part is preferred and what part common, except that of the whole amount authorized two-fifths is preferred. If the stock be calculated at the market value reported, and bonded indebtedness reported be calculated at par, the value of every mile of the entire line is $45,728, and that part of the road in Indiana is worth about $30,000,000.

Their report shows a net earning per mile of $3,487 for the entire line. On a six per cent. basis this makes every mile of the road worth over $58,000, and the 647 miles in Indiana worth $37,526,000.

The listed value of the property of this corporation is $8,255,571, as reported by them.

Why, gentlemen, the net earnings of this road in Indiana *was*, during the last year, as shown by their report now before you, $2,452,712, or over twenty-nine per cent. of the amount upon which they were taxed last year! How can the conclusion be avoided that this road ought to have its property listed at not less than $30,000,000?

All the companies that were merged in the consolidation were, according to the report in Poor's Manual, controlled by the Pennsylvania Company, and the consolidation is still controlled by it. The Pennsylvania Company owns a majority of the stock of each of said roads and of the consolidation.

Indianapolis & Vincennes railroad.

(See Poor's Manual for 1888, page 463; 1889, page 456; 1890, page 880; 1891, page 868.)

Average annual net earnings per mile for last three years	$134 20
Value per mile on 6 per cent. basis for three years	2,238 00

Capital stock is $1,402,000, of which every share is owned by the Pennsylvania Company. It has no market value because there is none of it for sale, but when they say that it has no value, as they do in their report to this board, that is not true.

418 The bonded debt of this company is $3,102,000. Who holds these bonds? We do not know. They entirely dis-

appeared from the market more than ten years ago, and the presumption is that the Pennsylvania Company owns every dollar of them.

The Pennsylvania Company operates this road. How? As owners? No. As lessee. That is, the Pennsylvania Company owning the stock elects the board of directors, and then that board of directors lease to their principal. On what terms we do not know. It may be at a mere nominal rental.

What is the basis of the report upon which this board is expected to act? The real earning received by the lessee, or the nominal rental received by the dummy board of directors?

In their general balance-sheet, as shown by Poor's Manual, you find on the credit side an item "due Pennsylvania Company, lessee," and in the report to this board, "due Pennsylvania Company for advances, $2,284,083." A debtor has a very easy and indulgent creditor when debtor and creditor are one and the same. If a man calls one of his pockets Pennsylvania Company and the other I. & V., and opens an account between them, he can soon bankrupt the I. & V. and no one be out a dollar.

In this way the real income of a road may be hidden.

The vice-president of the Pennsylvania Company swears to the report, to the best of his knowledge and belief. He evidently has no knowledge and is perfectly free to believe anything.

It is not easy for us to understand the conditions of this property. The Pennsylvania Company controls a line from St. Louis to Indianapolis, the Jeffersonville, Madison & Indianapolis south, and a perfect net-work of roads north and east. The owners of this road have no connections with it at its southwestern extremity. It does not seem improbable that if this road was in adverse hands it would pay better. A new line of competition would be opened with
419 the Pennsylvania Company through Indianapolis from the southwest. If a road is held to prevent competition, it ought not to be allowed to escape taxation because the earnings are low.

We ask you to consider in this connection for what it is worth, the fact that while of the great number of roads operated by this company in 1889, nine are reported to have lost in the aggregate over $1,250,000, and the aggregate net earnings of eleven others were only $225,000, yet this company made, during the last year, a net earning per mile of $3,812 on 3,400 miles operated by it west of Pittsburgh; and the Pennsylvania Railroad Company, in whose interest the Pennsylvania Company is managed, in the same time made an average of $8,500 per mile on 2,390 miles east of Pittsburgh.

The net earnings of this vast system, according to its reports, *is* sufficient, on a basis of six per cent. earning value, to make every mile of the whole 5,796 miles operated worth $100,000.

And yet this corporation has been allowed year after year to escape with only a nominal valuation of the large properties they control in Indiana.

We do not know why it is so, or how it has been brought about, but certain it is that this combination and the Big Four combina-

tion have always managed to secure an appraisement of their property in this State lower, in proportion to their earnings and stock and bond value, than any other roads in the State.

Terre Haute & Indianapolis railroad.

(See Poor's Manual for 1888, page 1,106; for 1889, page 523; 1890, page 246; 1891, page 948.)

Average annual net earnings per mile in 1887, 1888 and 1889	$2,468 00
The net earnings reported to the board of equalization last year, ending October 31, 1890	3,140 00
Value per mile on 6 per cent. earning basis for four years	45,425 00
420 Value per mile on 6 per cent. basis of earnings for a period of nine years ending 1889, over	50,000 00
General balance-sheet assets for 1887	6,550,210 00
Value per mile of assets	56,900 00

For a period of thirty-eight years continuously, this road has paid its stockholders an average of over nine and one-half per cent. dividends and paid the interest on its bonded debt.

Capital stock	$1,988,150 00
Bonded debt	2,200,000 00
Value of road	4,188,150 00

Can there be any mistake in such a calculation? Surely not. The entire assets of this road *was* appraised last year at $1,740,000, or at the rate of $22,000 per mile, when the real stock and bond value is over $52,000.

This road ought not to be appraised at less than $5,000,000, and no injury would be done if it was taxed at its own asset valuation.

You will observe also that this road reports ninety-six miles of side track, and main track less than eighty miles. Forty miles of this side track are branches to coal mines and assessed at only $2,200 per mile.

In their report in Poor's Manual for 1887, 1888, 1889 and 1890, these branches are reported as main tracks operated. If reported in the same way for taxation, the valuation of last year only amounts per mile to about $15,000.

Union Railway Company, and Belt railroad.

The Indianapolis Union Railway Company and the Belt Railroad and Stock Yards Company are wholly situated in Marion county, and are now owned and controlled by the Big Four, the Pittsburgh, Cincinnati, St. Louis & Chicago (or Penn. Co.), and the Terre Haute & Indianapolis.

The Union Railway Company was organized, or reorganized, in 1872, by the Jeffersonville, Madison & Indianapolis, Terre
421 Haute & Indianapolis, the Cleveland, Cincinnati & Indianapolis, the Cincinnati, Indianapolis, St. Louis & Chicago, the Chi-

cago, St. Louis & Pittsburgh. Its capital stock was $250,000, divided into five shares of $50,000, and each of said roads held one share. From this it appears that the Big Four now controls two shares, the Pittsburgh, Cincinnati, St. Louis & Chicago two and the Terre Haute & Indianapolis one.

Under the law of 1885 provision was made by which the Union Railway Company could, under agreed terms, admit to share in its terminal facilities, other companies to be called associate companies. The board of directors consists of one representative from each of the proprietary companies.

All other roads in Marion county use the tracks and terminal facilities of the Union Railway Company. What they pay for this privilege we do not know. It is always reported that the company has no income. It is hardly believable that companies having no proprietary interest in this road are permitted to use it with no other compensation than to pay their proportion of the expenses. If this company has no income you may depend upon it there is some arrangement by which these associate companies pay for the privilege extended to them; and it is not intended you or the public should know what that arrangement is.

The reports of the L., N. A. & C. and the L. E. & W. show that these companies pay rent for use of tracks—one $12,636 and the other $20,446 per annum. The C., H. & I. also pays a rental of $25,672 per annum.

The general balance-sheet shows the assets to be $2,518,959 (Poor's Manual 1890, page 338), and their report shows that the roads owning it have invested in it $1,405,464, and in addition to this they have issued $1,000,000 bonds, and the proceeds have been added to the value of the property, making a total actual investment of $2,405,464.

In addition to this they have received valuable grants by the vacation of streets and alleys that add largely to the actual value of its tangible property, to say nothing of the fact that much of
422 the real estate which they hold and use as right of way is worth many times what it was when they acquired title. It is within the limits of safety to say that the tangible property of this road, on the same valuation as other property, was worth in Marion county on April 1, 1891, $3,000,000, and that its franchises and privileges are worth at least as much more.

This very valuable property has for years almost escaped taxation. When we first appeared for Marion county before the board of equalization the whole property, tangible and intangible, was listed at only $79,000. In 1887 it was raised to $104,950, in 1888 to $270,800, 1889 to $479,000, and in 1890 to $579,000. Thus in little dribs has the valuation been increased until last year the county received taxes on about twenty per cent. of the true value of the tangible property alone, according to the actual investment as shown by their own reports.

In addition to this valuable property, this company controls, under a lease for 999 years, all the tracks of the Belt Railroad and Stock Yard Company.

An examination of Poor's Manual for 1888, page 465; 1889, page 458, and 1890, page 334, shows the net earnings of the Belt Railroad and Stock Yard Company, for 1887, to be $150,216, and for 1888, $148,637. The reports for 1890 and 1891 contain the statement for 1888 repeated, and no statement for 1889 or 1890. On the two years reported the value per mile on a six per cent. earning basis is not less than $206,000.

You will, however, observe that this is not the report of the Union Railway Company of its receipts from the leased property, but the report of the Belt Railroad and Stock Yard Company, and only includes what the Union Railway Company pays them on the lease. It does not give you the slightest information as to the real value of this property to the Union Railway Company.

The cost of the Belt, as reported, was $2,074,565. The capital stock is $1,000,000, and the bonded debt $1,000,000. The interest on the debt and a dividend of seven per cent. annually on stock is paid.

423 The roads owning the Union Railway Company, by threat to build another belt, forced the Belt Railroad and Stock Yard Company to make this lease. This was stated before the board of equalization in 1888 by one of the officers of the Belt. The Belt depended in a large measure upon these roads for its income.

Last year we called the attention of the board to cause No. 7617, Lee *vs.* Downing & Claypool, in the United States district court. In that cause it was alleged in the bill, and admitted in the answer, that Mr. E. F. Claypool, who was a large stockholder and buying every dollar of stock he could get, bought $10,000 worth of stock at fifty per cent. premium in December, 1890. It was also alleged and admitted that in the following eighteen months ending July, 1882, there had been paid to him $12,000 in dividends on the $10,000 of stock. This was eighty per cent. per annum of its full value. This is of some value in determining what was the income of the Belt road, at the time when the lease was made to the Union Railway Company, in 1882.

As soon as the lease was executed all reports of earnings ceased, and if the Big Four, Panhandle and the Union railway officials are to be believed, the leased property became at once an expensive luxury, in the use of which they indulge for no other reason than the great interest they have in the public welfare.

That part of the Belt property, tangible and intangible, controlled by the Union Railway Company, is quite as valuable as that of the Union Railway Company itself. For two or three years before it was leased, the railroads paid about one dollar per car for every car transferred over it.

Last week it was announced that 3,000 cars were being transferred daily, or at the rate of nearly 1,000,000 each year. Calculated at the old prices, this would equal a receipt of more than twelve per cent. on $8,000,000.

But you will be reminded at every step that the Union
424 Railway Company has no income, and this will be urged as

a reason for a nominal appraisement. Such talk is pure and unadulterated nonsense; no difference who indulges in it.

Under this kind of subterfuge the property of the Belt, under control of the Union Railway Company, has also practically escaped taxation. It was appraised last year at only $530,000, not ten per cent. of its true value.

Such valuations are a gross injustice to the people of Marion county and of the State. We are glad to see, by the report here this year, that we have succeeded in convincing the president and secretary that they were a little mistaken last year when they swore that the Union station was only worth $40,000. In their report this year they have got it up to $200,000.

Quite a difference, truly; but there are a good many tax-payers in Marion county who will stare yet when they compare the representations made to the Indianapolis common council in regard to the cost, and even this valuation of the elegant structure. One-half million is quite a discrepancy.

We shall submit to this board a certified copy of the lease made by the Belt Railroad and Stock Yard Company to the Indianapolis Union Railway Company.

This lease, with some exhibits thereto attached, will be interesting reading.

We call your attention, briefly, to the provisions of it.

It provides for an annual rental of $45,000, and to pay an annual debt to the Indianapolis & Vincennes Railroad Company on a contract with Kingan & Co., of $1,000.

This is a small item when compared with the additional agreement by which the lessee agrees to deliver, free of charge, from all railroads to the stock yards and from the yards to all roads, all live stock that may be tendered, and agrees to pay the lessee fifty cents for each deck of every car-load of live stock that may be loaded or unloaded at the yards, and agrees to put in all additional tracks that may be needed at yards, and operate locomotives sufficient to do all switching at yards, and to do all switching, all free of
425 charge; and agrees to deliver to the yards all merchandise, coal and supplies that may be so consigned for their use, free of charge; and pay all taxes on all the property leased, and save lessee from all damages.

The lessor invests lessee with all its franchises by the lease, so that the lessee is by agreement to pay taxes on franchises, if any are assessed.

Failure to pay rent or comply with terms works a forfeiture, with the provision that lessor shall notify, not only the Union Railway Company, but each of the five roads that form that company.

It is further agreed that the covenants of the lessee, in the lease, cannot be compensated in damages, and that irreparable injury would result from violation of them, and that the lessor may proceed by injunction.

You will, of course, observe how this lease is signed.

We desire particularly to call your attention to the fact that only a part of the property of this corporation is leased to the Union

Railway Company, and that the Belt Railroad and Stock Yard Company is an existing corporation in Marion county. It owns real estate, has capital stock, all paid up, and tangible property other than real estate.

The lease alone is an item of personal property of large value, but not a dollar's tax does it pay on anything except real estate. And in defiance of law it makes no report as required by section 73 of act of 1891. Not only has it made no report this year but for several years it has made none. We suggest that it is the duty of this board to see to it that this corporation be made to list its property, and that you take such an action as will compel it, if possible, to pay the taxes on its property for last year and for several years previous.

The people of Marion county are expecting that you will see to it that these corporations shall be made to pay taxes on the true value of their property, tangible and intangible.

The public have a right to expect that our demand will not
426 be answered by this board, as it has heretofore been met by the board of equalization under the old law by a petty increase of a few thousand dollars, where it ought to be millions.

If you will give us the opportunity, we will show you that the value of the property of these two corporations is not much less than $10,000,000, and that it has not been listed at over ten per cent of its true value.

White River road.

We desire to call your attention to a piece of property of considerable value, also situated in the city of Indianapolis, that in our opinion ought to be inquired into, and that is the White River road. It is hardly known to the public that there is such a road. It is one and one-quarter miles of track and right of way in the corporate limits in the city of Indianapolis. It has been appraised year after year at $5,040. It will puzzle you to point out where a mile and a quarter of right of way in the city of Indianapolis could be located, and not be worth many times that, to say nothing of the superstructure.

If this board will inquire into this, we believe it will find that the net income of this road is more than that every year.

Louisville, New Albany & Chicago railroad.

(See Poor's Manual for 1888, page 485; for 1889, page 476; for 1890, page 795; for 1891, page 754.)

Average annual net earnings per mile in 1887, 1888, 1889, and 1890	$1,709 00
Value per mile on a 6 per cent. basis for four years	28,483 00
Capital stock, $5,000,000.	
Lowest value in 1887, 30½	1,525,000 00
Bonded debt, $9,900,000.	
Lowest value in 1887, 109	10,791,000 00
Value of road	$12,310,000 00

Value per mile on market value of stock and bond-, including all operated, except trackage	24,000 00

427 The action of the stockholders of this road in 1890, corroborates us in our valuation. On March 22d of this year, the stockholders authorized the execution of a mortgage dated May 1, 1890, covering all the roads and corporate property, including its terminal facilities at Chicago, to secure an issue of fifty-year five per cent. bonds at the rate of $25,000 per mile, to retire outstanding bonds and provide additional equipments. This increased the bonded debt to $12,800,000. The entire assets of this road *was* appraised by the board of equalization in 1888 at a value of $8,500 per mile. Last year, under a plea of poverty, this valuation was reduced $300 per mile.

Lake Erie & Western railroad.

(See Poor's Manual for 1888, page 471; 1889, page 463; 1890, page 885; 1891, page 73.)

Average annual net earnings per mile, for 1887, 1888 and 1889	$1,488 00
Value per mile on 6 per cent. basis for three years-	26,629 00
Capital stock (preferred) $11,840,000.	
Actual value reported to this board at $58 per share-	6,867,200 00
Capital stock (common) $11,844,000.	
Actual value reported to this board at $17 per share-	2,012,800 00
Bonded debt at par	7,250,000 00
Total	$16,130,000 00
Value per mile on stock and bond, market-value basis	$27,385 00
This calculation includes 589 miles operated.	
The entire assets of this road, as appraised last year, amount per mile to	$9,000 00

428 According to Poor's Manual this company pays the Indianapolis Union Railway Company, as already mentioned, $11,050 as rental for use of terminal facilities and pays cost of repairs and renewals, based on usage. The company also uses the tracks of the Union Railway Company and pays a rental for that of $9,396, and cost of repairs and renewals, and a uniform charge per car for industries, and for exchanging traffic with connecting lines. In 1890 this road made a dividend of $473,600, paid interest on its funded debt, and had a surplus of $99,548 (Poor's Hand Book 1891, page 121.) This shows our estimate to be correct.

Cincinnati, Hamilton & Indianapolis railroad.

(Poor's Manual for 1888, page 1065; 1889, page 391; 1890, page 202; 1891, page 146.)

The capital stock of this road is $2,500,000. The bonded indebtedness is $2,500,000. Every dollar of the stock, and $700,000 of the

bonds, are owned by the Cincinnati, Hamilton & Dayton. The C., H. & D. keeps up the organization, and the organization leases back to the C., H. & D.

This road has been reported as never earning the interest on its bonds. In view of the fact that the C., H. & D. owns all the stock and more than one-fourth of all the bonds, and by an organization of its own creation also becomes the lessee, it might be of interest to inquire into the terms of the lease. It might, and we believe will, explain how it is that this road cannot earn the interest on its bonds, and that the C., H. & D. has a net earning that makes every mile of that road worth nearly $175,000, on a six per cent. basis.

The C., H. & D. operates seven roads, in all about 268 miles, and according to the report of these several roads, two lost money, three barely paid expenses and one had only a moderate income, while the parent road, of only 60 miles, had a net income for 1880 of $10,469 per mile.

This is a six per cent. income on a valuation of only a little less than $50,000 per mile of every mile, not only of the C., H. & D., but of all the roads operated by it.

They would have you believe that six roads operated earn
429 no part of the income credited to the parent road. Every year this pretense that the C., H. & I. does not earn the interest on its bonds is made.

It is not true, gentlemen, and if you will take the trouble to investigate you will find that the C., H. & D., by the lease stratagem, is enabled to transfer to its own account the earning of this road, and that when the earning of the C., H. & I. are calculated, it gets credit for no part of earnings except the sum paid as rent on the lease.

We can learn little from the reports of this road of its value on an earning basis, but the report made to this board states the actual value of stock at $50, which makes the whole number of shares (28,370½) of the road worth	$1,418,525 00
The bonded debt is	2,500,000 00
Total value	$3,918,525 00

This shows a valuation of almost $40,000 per mile.

The assessed valuation last year of this line within the State was $884,140.

The gross income of the road last year was, according to the report now before the board, about	$655,000 00
Gross expenses	658,856 00
There is about 20 miles of the road outside of the State, and the gross income and the gross expenses for miles within the State each amounted to about	520,000 00

Does it strike you, gentlemen, that the appraised value of this road ought to be as low as $11,000 per mile when its gross income amounts to $6,621?

That this statement is within the limits of the truth will be seen when you consult the general balance-sheet of the C., H. & D., where among the assets the interest in the C., H. & I. is listed at $1,564,116.92.

That by this they mean the value of the stock they hold is evidenced by reference to the financial statement of the C., H. & I.

430 It is clear, therefore, that we are right when we estimate the mortgage debt at par, and that the true value of the property of the C., H. & I. is over $3,900,000. The estimate of the C., H. & D. makes it over $4,000,000.

And we insist that Indiana is entitled to taxes on her proportion of this sum.

This road also, as heretofore mentioned, pays a rental to the Union Railway Company of $25,672 and cost of repair and renewals.

Indianapolis, Decatur & Western railroad.

(See Poor's Manual for 1888, page 464; for 1889, page 457; for 1890, page 223.)

Average annual net earnings per mile for 1888 and 1889	$792 26
Value per mile on 6 per cent. basis of net earnings	13,204 00
Capital stock	1,000,000 00
Bonded debt	4,218,950 00
The bonded debt amounts per mile to more than	27,000 00

In 1889 $1,800,000 of this road's bonded indebtedness ranged from 95 to 104¼. The entire assets as appraised last year amount per mile to $6,880.

This road cost over $30,000 per mile, and the bonded debt was worth a premium, but its attorneys were before the board of equalization last year to plead poverty. The value of bonded debt shows that it is property, tangible and intangible, is worth about $5,000,000, but it was appraised at $514,550.

In July, 1889, this road was turned over to the trustees of Indianapolis, Decatur & Springfield railroad mortgage and in December, 1890, a committee of bondholders reorganized it under the name of Indianapolis, Decatur & Quincy with a capital of $2,400,000.

Why it is reported this year to this board as Indianapolis, Decatur & Western we do not know. According to Poor's Manual it ought to be reported here as Indianapolis, Decatur & Quincy.

431 We should feel that we had not completely done our duty if we did not cite to you some other striking evidences of undervaluation.

Examine the reports of the board of equalization for 1889, page 127, and 1890, page 125.

The aggregate valuation of all improvements on the right of way of all railroads in Marion county was only $432,000 in 1889, and $520,000 in 1890. Proof will not be required that this is not the

true value, when it is remembered that it includes the Union station and all other depot buildings (freight and passenger), all machine shops, car shops, round-houses, tool-houses, storage-houses, water tanks, and all buildings of all kinds used for railroad purposes in the county.

More than $1,000,000 was spent on the Union station, and it is strange that it is only worth $250,000 for taxation.

If you will turn to page 112 of last year's report, you will find it stated that the value of all improvements on rights of way in the whole State of Indiana is only a little over $2,000,000.

Do you think that amount is the true value of all depot buildings, all machine shops, all car shops, all round-houses, all storage-houses, tool-houses, section-houses, water tanks, and all buildings of all kinds used for railroad purposes in the State of Indiana? Why, gentlemen, $2,000,000 will not pay first cost on the water tanks alone.

Two million dollars for all the improvements on railroads in Indiana? One-fourth of all the improvements on rights of way of all railroads in the State in Marion county? Nonsense. It is absurd. We feel sure that this year this board will, under the law of 1891, put an end to this farce, and do justice to the people of Marion county and of the State.

The demand for a true valuation of railroad property cannot be laughed down. Sneers will not answer it. Sarcastic remarks and insulting insinuations about those who voice this demand will not pass for argument with sensible people.

432 The cuttle-fish argument has served for a time. Its time is about up. Sooner or later the waters will be clear and the truth will come to light.

The belief is in the air that railroad corporations are not dealing fairly and justly with the public. The public may not be able to give with accuracy the foundation of the feeling, or demonstrate with facts and figures. They see results. They look on and see the tremendous games being played. The surface only is seen of the strategetic management of railroads. There is a growing feeling that all corporations, quasi-public, and rightly granted large and peculiar privileges, ought to be compelled to disclose their doings to the minutest detail. Public interest and public safety alike demand it. Public opinion is massing and beginning to move. After awhile it will acquire momentum. Let those look out who stand in the way.

Public opinion is just when informed, but kept in ignorance and compelled to act without knowledge it is dangerous. Let those look out who, for the purpose of gain, seek to keep it in ignorance.

Again, allow us to repeat that railroad property is entitled to be treated exactly like individual property, and all we ask at your hands is to have it so treated. When you have made your valuation of it, not only so that you are within the limits of justice to all railroads, but within the bounds of generosity, the aggregate valuation of railroad property in Indiana will be over $200,000,000 in-

stead of less than $70,000,000, and the valuation in Marion county, instead of less than $3,500,000, will not be less than $15,000,000.

Before we close, we desire to refer briefly to the subject-matter of an editorial in the Indianapolis Journal last Sunday morning, and entitled: "Small returns of railroad properties."

The assets (not cost) of the railroads of the United States, according to reports in Poor's Manual for 1891, *is* represented by
433 over $10,000,000,000, consisting of stocks, etc., etc. (Poor's Manual for 1891, page 1, Introduction), and the whole number of miles completed up to the close of the fiscal year was 163,420. On this basis of assets the gross earnings for 1890 *was* 10.8 per cent., and net earnings, as stated, about 3.5 per cent. The actual cost of road was about $8,500,000,000, and on this basis the gross earnings 12.7 per cent., and the net earnings 4 per cent. (Page 7 of introduction.)

We are glad our attention has been called to this view of the subject by this article, as it furnishes a good method by which we can illustrate the undervaluation in Indiana.

You have nothing, of course, to do with the capitalization assets of railroad property, further than to use them as a basis, and by the market value of stocks and bonds, to determine what is the true value of all property, tangible and intangible.

Poor's Manual for 1891 (page 7 of introduction) also shows that the average net traffic earnings per mile of the railroads in the United States *was*, in 1890, $2,162. On a six per cent. basis this shows an average valuation per mile of over $36,000.

The number of miles assessed in Indiana in 1890 was 5,929, and at this rate is worth over $213,000,000. It was assessed, however, at less than $70,000,000, or at an average of about $10,800 per mile.

On a six per cent. earning basis the true value of all railroad property in the United States in 1890 was about $6,000,000,000.

If it was appraised for taxation like it was in Indiana, its listed valuation was only $1,800,000,000. On this valuation there was a net income of twenty per cent. in 1890. Not such a small return after all.

We are here as the attorneys of Marion county, as you know, and desire as such to be of any assistance we can to this board, and to be as little trouble to you as possible.

434 We know it to be utterly impossible for you to enter very largely into examination of witnesses, but we may, if it seems advisable, in a few instances offer to introduce some witnesses, but if possible, shall confine ourselves to documentary evidence, as this will not consume time by unnecessary talk.

VAN VORHIS & SPENCER, *Attorneys.*

435 *Lease of the Belt Railroad and Stock Yard Company to the Indianapolis Union Railway Company.*

This agreement, made and entered into this seventeenth (17th) day of October, 1882, between the Belt Railroad and Stock Yard

Company of the first part and the Indianapolis Union Railway Company of the second part, both being railroad corporations of the county of Marion and State of Indiana, witnesseth:

First. That for a term of nine hundred and ninety-nine years, beginning on the first day of October, 1882, the locomotives and trains of the party of the second part for the transportation of freight and passengers, may be run and operated by it over and upon the track and road of the party of the first part, and to that end the party of the first part, for the consideration and upon the terms and conditions hereinafter mentioned, grants, demises and lets to the party of the second part, for the term aforesaid, its railroad, extending from Brightwood, near the city of Indianapolis, Marion county, Indiana, around the eastern, southern and western sides of said city to North Indianapolis, together with the right of way, tracks, side tracks, including all tracks leading to the stock yards, bridges, depots, stations, engine-houses and repair shops, locomotives, cars and machinery, and generally all property of every name or kind appertaining to, or used or intended to be used in the operation of said railroad, reserving only the stock yard of the party of the first part, and the land on which the same is situate used or intended to be used for the purposes of said stock yard; being all the land of the party of the first part not used or intended to be used for the purposes of said railroad; also excepting all buildings, structures and machinery, embracing the water-works buildings, machinery and tanks of said stock-yard grounds, and generally all property of every name or kind used or intended to be used in connection with said stock yard.

The terms of this lease shall begin on the first (1st) day of October, 1882, and end on the thirtieth (30th) day of September, 2881.

Second. The party of the second part covenants and agrees to pay to the party of the first part as rent for said property the sum of forty-five thousand dollars annually in monthly installments of three thousand seven hundred and fifty dollars, beginning on the first day of November, 1882, and payable on the first day of each month thereafter during said term.

Third. The party of the second part covenants and agrees that it will operate said railroad, and so conduct the business thereof during said term as to fully perform and discharge all the duties and obligations towards the public and the city of Indianapolis, that now rest upon the party of the first part by virtue of the laws of the State of Indiana, or any ordinance of the city of Indianapolis: Provided, however, that nothing herein contained shall be deemed or taken as an assumption by the party of the second part of any bonded or other indebtedness of the party of the first part; also, that it will keep up and maintain said railroad rolling stock, machinery and appurtenances in as good condition as the same are now.

Fourth. The party of the second part hereby assumes and agrees to perform in lieu and stead of the party of the first part, a certain contract entered into between the party of the first part, under its former name of The Union Railroad Transfer and Stock Yard Com-

pany and Kingan & Co., and other pork packers of the city of Indianapolis, dated November 8, 1877, relative to the transportation and delivery of hogs.

436 It also assumes and agrees to perform a contract between the party of the first part and Kingan & Co., whereby the party of the first part is required to pay to Kingan & Co. one thousand dollars a year for the unexpired term of a contract between the Indianapolis & Vincennes Railroad Company and said Kingan & Co., by which the latter agree to pay to the former that sum annually during the term named in the contract, in consideration of certain privileges to use its track. Said contract is dated March 28, 1873, and will expire on the 28th day of March, 1883. A copy of each of said contracts is hereto annexed.

Fifth. The party of the second part promises and agrees that during the continuance of this lease it will, in so far as it legally can, protect and encourage the stock-yard business of the party of the first part; that it will promptly deliver, free of charge, to the party of the first part, all live stock at the stock yard that may be tendered to it for such delivery from other railroads; and that it will promptly deliver to other railroads all live stock that may be tendered to it for such delivery by the party of the first part, free of charge to the party of the first part; and the party of the second part promises and agrees that its charges to shippers or other persons for transporting live stock over said railroad to and from said stock yard, shall at all times be reasonable, and if at any time a difference should arise between the parties hereto as to the reasonableness of the charges of the party of the second part for such transportation, the same shall be submitted to arbitrators, to be chosen as hereinafter provided, whose decision shall be final; that it will pay to the party of the first part fifty cents for each deck of every car-load of live stock that may be loaded or unloaded at said stock yard, except hogs, provided for in said contract of November 8, 1877, between pork-packing firms and the party of the first part, for the loading of which no charge shall be made against the party of the second part, settlements for the same and payments to be made monthly: Provided, however, that if at any time either party shall become dissatisfied with said charges for loading or unloading, or both, it may give thirty days' notice thereof in writing to the other party, at the expiration of which time each party shall choose one arbitrator to fix and determine the just amount of such charges. If said two arbitrators cannot agree, they shall choose a third person. The decision of said arbitrators, or a majority of them, if a third person shall be chosen, shall be final. In case either party shall fail, for ten days after the expiration of said thirty days' notice, to choose an arbitrator and notify the other party, in writing, of its choice, then said other party may appoint such arbitrator, and the action of said arbitrator so appointed shall have the same binding effect as if he had been duly chosen by the party entitled in the first instance to make the choice.

Sixth. The party of the second part promises and agrees to put in, from time to time, and maintain additional side tracks at the

stock yards for the use and convenience of the party of the first part whenever the business of the stock yards may require. If at any time the party of the first part shall demand any additional track or tracks, which, in the opinion of the party of the second part the business of the stock yards may not reasonably require, the question in difference shall be submitted to arbitrators to be chosen as in the last preceding clause provided, whose decision shall be final. Also to furnish and operate a sufficient number of locomotives free of charge, to do the necessary switching of stock cars and other cars at the stock yards, and to do all such switching promptly.

Seventh. The party of the second part promises and agrees to deliver to the party of the first part all merchandise, coal and other supplies consigned to the party of the first part, and intended for its own use in connection with the business of its stock yard, free of charge for its transportation over the tracks operated by it.

Eighth. From and after the current year the party of the second part promises and agrees to pay all taxes and assessments upon the property hereby leased. The taxes for current fiscal year will be paid by the two parties hereto equally, that is, one-half by each.

437 Ninth. The party of the second part covenants and agrees to save the party of the first part harmless from all damages resulting from accidents or any neglect or omission of duty occurring in the operating of the road by the party of the second part.

Tenth. The party of the first part covenants and agrees that at all times during the continuance of this lease it will supply water at its stand-pipe as now located on the line of its said railroad, near its engine-house and repair shop, to all locomotives in the service of the party of the second part free of charge. In case of accident to the boiler or pumping machinery of the party of the first part whereby it may be temporarily disabled from so supplying water for the locomotives of the party of the second part, it shall not be liable to the party of the second part for damages on account of failure to so supply water, until after a reasonable time for repairing or replacing its boiler or other disabled pumping machinery shall have elapsed, but during such reasonable time for replacement or repair the party of the second part shall furnish steam for pumping purposes from the stationary engine in said engine-house and repair shop through an underground pipe connecting the same with said pumping machinery.

Eleventh. In so far as it lawfully can, the party of the first part invests the party of the second part with the benefit of its franchises relating to said railroad and the operating of the same. The party of the second party may extend, at its own cost, the railroad beyond its present termini to any point or points that it may deem expedient, or until it shall have completed the circuit of the city of Indianapolis, and to that end, if it shall deem it necessary or expedient, may use the name and franchises of the party of the first part: Provided, however, that in so using the name of the party of the first part, or in making such extension, it shall not create any liability of the party of the first part for the payment of money. All such exten-

sions of said railroad shall belong exclusively to the party of the second part, and at the termination of this contract, from whatever cause, shall not revert or go to the party of the first part.

Twelfth. At the expiration of this lease the party of the second part will surrender all the said leasehold property to the party of the first part in as good condition as the same is now.

Thirteenth. In case the party of the second part shall fail to pay any installment of rent within thirty days after the same shall fall due, or in case it shall suffer said railroad to be sold for taxes, then in either such case the party of the first part may, at its option, declare this agreement forfeited and terminated, and may, at the expiration of the further term of thirty days thereafter, re-enter upon said leasehold premises and property, and resume and hold full possession thereof the same as though this indenture had not been made: Provided, however, that before so re-entering upon the leasehold premises and terminating this agreement, it shall first give thirty days' notice, in writing, of its intention so to do to each of the five railroad companies, or its successor or assigns that are now members of the party of the second part, viz: The Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, The Cincinnati, Indianapolis, St. Louis & Chicago Railway Company, The Jeffersonville, Madison & Indianapolis Railroad Company, The Pittsburgh, Cincinnati & St. Louis Railway Company and The Terre Haute & Indianapolis Railroad Company.

Fourteenth. It is mutually conceded and agreed by the parties hereto that the covenants and agreements of the party of the second part contained in each of the foregoing clauses numbered three, five and six are material and essential; that violation of the same could not be adequately compensated in an action at law for the recovery of damages and that irreparable injury would result to the party of the first part from such violation. It is therefore agreed that if at any time the party of the first part shall deem any of said covenants and agreements violated it shall have the right to
438 proceed by suit for injunction, or by such other special legal or equitable form of remedy as it may deem most appropriate and expedient to enforce the just observance and performance of all or either of said covenants and agreements.

Fifteenth. The party of the first part hereby represents and guarantees that the only incumbrance upon the property demised are two mortgages, one dated June 1st, 1877, for $500,000 that will become due June 1st, 1897, the other dated April 30th, 1881, for $1,000,000 that will become due April 30th, 1911, but of said last-named sum only $500,000 is an actual existing liability, the other $500,000 secured by five hundred bonds numbered from 1 to 500 inclusive, for $1,000 each, is set apart as a fund with which to take up the bonds secured by said first mortgage, and to be used for no other purpose; and the said five hundred bonds securing the same being in the hands of Conrad Baker as trustee to be held for that purpose. The actual bond indebtedness of the party of the first part secured by mortgage on the demised premises is therefore $1,000,000. The party of the first part covenants and agrees that it

will pay off and discharge the said mortgages at maturity and will fully protect the title and possession of the party of the second part against the said mortgages and the bonds secured thereby, and against any other claim upon the property hereby demised, but it is understood and agreed that the party of the first part shall have the right at its option to renew or extend its mortgage bond indebtedness not exceeding the present rate of interest now existing or any part thereof, and that for that purpose it may make a mortgage or mortgages for a sum or sums of money not exceeding in the aggregate the said actual amount due on the existing mortgages. All moneys realized through such additional mortgage or mortgages shall be used in liquidating the existing mortgages and for no other purpose, so that the mortgaged indebtedness for which the property covered by the existing mortgages shall be liable, and the interest charges upon the same, shall at no time exceed the amount for which it is now actually liable. Any such future or additional mortgage shall embrace all the property embraced in the existing mortgages. The party of the first part hereby covenants and agrees that it will apply the rental agreed to be paid under this lease to the payment of the interest upon the outstanding mortgages, and any sinking fund required thereby, due evidence of such payments and application to be furnished to the party of the second part when required; and that if the said party of the first part receiving the rental aforesaid, shall in any year fail to apply the same to such purpose, the interest or sinking fund so remaining unpaid may be paid by said party of the second part directly to the parties to whom the same may be due from said party of the first part, and the amount thereof charged to said party of the first part on account of the rent herein reserved.

Sixteenth. The parties hereto respectively waive all benefit of relief from the valuation and appraisement laws.

In witness whereof, each of the parties hereto has caused its corporate seal and the signature of the president and secretary to be hereunto affixed in duplicate, the day and year first aforesaid.

BELT RAILROAD AND STOCK YARD COMPANY,

By W. R. McKEEN, *President.* [SEAL.]

Attest: E. F. CLAYPOOL, *Secretary.*

INDIANAPOLIS UNION RAILWAY COMPANY,

By W. R. McKEEN, *President.* [SEAL.]

Attest: W. N. JACKSON, *Secretary.*

STATE OF INDIANA, } *ss:*
County of Vigo, }

Personally appeared William R. McKeen and acknowledged the execution of the above contract and lease.

Witness my hand and notarial seal this 6th day of November, 1892.

[SEAL.] J. M. DUNCAN,
Notary Public.

439 Article of agreement made and entered into this 28th day of March, A. D., 1873, between the Indianapolis & Vincennes Railroad Company, of the first part, and Samuel, Thomas D. and James Kingan, trading in business under the name and style of Kingan & Company, of the city of Indianapolis, of the second part, witnesseth: That

Whereas, the said Kingan & Company desire to construct at their own expense a side track from the main track of the Indianapolis & Vincennes Railroad Company at a point between the crossing of said railroad over White river and the connection with the tracks of the Union Railway Company in Indianapolis to their packing house or houses, in the said city of Indianapolis, the said party of the first part for and in consideration of the sum of one thousand (1,000) dollars per year, paid quarterly to the said Indianapolis & Vincennes Railroad Company, and for the further consideration of the payment to said Indianapolis & Vincennes Railroad Company of the cost of maintaining a switchman at said switch should the same at any time be deemed necessary by the party of the first part, agree with the said Kingan & Company that the various railways centering in Indianapolis may enter upon said tracks of the said Indianapolis & Vincennes Railroad Company, subject to its rules and regulations for the running of trains, and haul over them, between the tracks of the Union Railway Company and the said switch constructed or to be constructed by the said Kingan & Company at the point named above, all cars of freight destined to or from said packing establishments of the party of the second part free of charge for track service. This agreement to remain in force ten (10) years from the date of its execution: Provided, always, that nothing in this agreement shall be so construed as to prevent the Indianapolis & Vincennes Railroad Company from claiming of the railway companies using its track for any damages that may result to said Indianapolis & Vincennes Railroad Company from any violation of its rules and regulations for use of said track between the points named above, payments to commence from the time the party of the second part make connection with the main track of said road.

Witness the hands and seals of the Indianapolis & Vincennes Railroad Company, by its general manager, and of the said Kingan & Co., this 28th day of March, 1873.

THE INDIANAPOLIS & VINCENNES
RAILROAD COMPANY,
By J. N. McCULLOUGH, *General Manager.*

Witness:
W. H. BARNES.

Agreement, made and entered into this 8th day of November, 1877, by and between the pork-packers of Indianapolis, Indiana, comprising Kingan & Co. (Limited), Landers & Co., James C. Ferguson & Co., Holmes, Pettit & Bradshaw, and Coffin, Wheat, Fletcher & Co., and their successors, assigns and administrators, engaged in the pork-packing business, occupying and using the premises now

in use by the aforesaid and subscribing hereto, parties of the first part, and the Union Railroad Transfer and Stock Yard Company of Indianapolis, Indiana, party of the second part, witnesseth:

In consideration of the valuable agreements by the said party of the second part hereinafter expressed, the said parties of the first part agree that all live stock intended to be slaughtered at their respective establishments shall be shipped to or delivered at the stock yards of the party of the second part, except the neighborhood stock arriving on foot and in wagons; the intent hereof being to make and establish the stock yards of the said second party the sole and exclusive live-stock market for Indianapolis. For and in consideration of the foregoing, and the charge of one cent per head, to be paid by the parties of the first part, the party of the second part agrees to transport and deliver hogs, including dead 440 hogs belonging to the lots or droves purchased to be transported in the same cars with the live ones, from the said stock yards to the said parties of the first part at their respective establishments; daylight delivery, promptly and without delay; night delivery to be specially arranged by the parties interested without extra charge. This agreement to continue in force for and during the lifetime or existence of said party of the second part, unless sooner annulled by mutual consent or by operation of law.

Witness hands and seals of the parties of the first part and the execution by the said company, through its president and secretary. Attested by seal by order of the board of directors.

(Signed) KINGAN & CO. (LIMITED), [SEAL.]
P. Pro J. M. SINCLAIR.
LANDERS & CO: [SEAL.]
J. C. FERGUSON & CO. [SEAL.]
HOLMES, PETTIT & BRADSHAW. [SEAL.]
COFFIN, WHEAT, FLETCHER & CO. [SEAL.]

[L. S.] (Signed) W. R. McKEEN, *President.*
(Signed) E. F. CLAYPOOL, *Secretary.*

Recorded November 7, 1882, at 12 o'clock m.

STATE OF INDIANA, } ss:
Marion County, }

RECORDER'S OFFICE.

I, Christian Brink, recorder in and for said county, do hereby certify that the above and foregoing is a true, full and complete copy of the record of a lease and agreement, "Belt Railroad and Stock Yard Co. to Indianapolis Union Railway Company," as the same now appears of record in the recorder's office of Marion county, in the State of Indiana, in Mortgage Record No. 120, at page 486.

In witness whereof, I have hereunto set my hand and official seal at Indianapolis, this 14th day of August, 1891.

[SEAL.] CHRISTIAN BRINK,
Recorder Marion County, In'a.

441 (From the Indianapolis Sentinel, August 21, 1891.)

Some Peculiar Figuring Done by the Railroads Before the Board of Commissioners.

To the editor.

SIR: The statements made by Mr. John H. Baker are rather astonishing, in view of the reports made to the board of tax commissioners and the report contained in Poor's Manual for 1891, page 740. We submit the following:

Lake Shore & Michigan Southern.

Whole number of miles operated	1,445
Whole number of miles owned	1,123
Total gross earnings of whole system for 1890	$20,865,756
Total net earnings	6,645,278
Average net earnings (1890) per mile	4,597
Average net earnings per mile for fourteen years	5,457

On a six per cent. earning basis the entire system, all branches and leased roads, is worth $90,000 per mile.

The report made to the board shows 206 miles in Indiana. We suggest that this be examined.

Miles in Indiana listed last year:

Lake Shore & Michigan Southern	152.94
Sturgis, Goshen & St. Louis	25.64
Ft. Wayne & Jackson	52.90
Total	231.48
Total listed valuation last year	$4,994,015
Listed valuation per mile	21,620

If it be true, as stated by Mr. Baker, that the Sturgis, Goshen & St. Louis and the Ft. Wayne & Jackson roads are worth nothing,

On a net 6 per cent. earning basis for fourteen years, the 152 miles of Lake Shore & Michigan Southern have a value of	$13,680,000
Capital stock	50,000,000
This stock, both guaranteed and common, during the whole of 1890, ranged from 99¾ to 108½. Bonded debt	46,864,000

And not a dollar of any bonded debt for which the Lake Shore was liable was at any time during 1890 worth less than 107.

If both stocks and bonds be estimated at par, the value of the road is shown to be about $97,000,000, or over $67,000 per mile.

This road has paid ten per cent. per annum dividends on its preferred stock, and from four to eight per cent. on common for ten years.

It is worthy of notice that one of the roads referred to by Mr. Baker to-day—the Fort Wayne & Jackson—is a leased road. By

the terms of the lease the $2,287,832 of its preferred stock produces an annual net income of five and one-half per cent. This is a corporation now existing, and with this $2,287,832 of stock, by the lease made worth par, ought not to be allowed to escape under the wing of the lessee, who has agreed to pay all taxes.

442 Mr. Mackey was also before the board with a lot of "impecunious" railroads. His roads may be "impecunious," but he seems to have thrived, notwithstanding the awful burden of his batch of worthless roads.

Peoria, Decatur & Evansville.

Capital stock	$8,380,000
1890, worth from 17 to 28¼, say 20	1,676,000
Bonded debt	4,845,000

Most of this was, during 1890, worth from 101 to 110. It is very safe to count the debt at par—

On this basis the value of the road is	8,560,000
Value per mile	26,240
The net earnings, as shown by Poor's Manual, 1891	1,413
Value per mile on a 6 per cent. basis	23,500
Listed valuation last year at	293,114
Per mile	7,800

There are 37.72 miles of this road in Indiana, and it ought to be taxed at not less than $925,000.

Louisville & Terre Haute.

Capital stock	$3,000,000 00

This was worth in December, 1890, 90 cents.

Bonded debt	3,405,000 00

This was worth in December, 1890, $1.18.

Estimate of both at par and the road is worth	6,405,000 00
Or per mile, over	40,000 00
The average net earnings per mile in 1890 was	2,789 37
On 6 per cent. basis, the whole per mile is over	45,000 00

The impecuniosity of this road is alarming.

The Evansville, Terre Haute & Chicago.

The report made to the board of tax commissioners is not very satisfactory. This road is leased to the Chicago & Eastern Illinois for nine hundred and ninety-nine years at a rental of $75,000 per annum, and lessee pays interest on income bonds, making annual rental $84,000.

Capital stock	$581,950
Bonds	1,100,000
Total	$1,681,950
Bonds and stocks per mile, over	47,000

Indiana Block Coal railroad.

The report to the State board in this case, like the preceding, gives very little information.

This road is also leased to the Chicago & Eastern Illinois at a rental of $12,500 per annum. By reference to Poor's Manual for 1891 it will be seen that the income of this road is its rental and $1,610 from some other source.

It is not shown whether the lessee makes more out of it or not. The net income is over $1,000 per mile to the stockholders. The road costs $225,000 for 12.72 miles.

The Chicago & Eastern Illinois controls all of the roads represented by Mr. Mackey.

443 This is another instance where the principal road seems to absorb all proceeds of all leased roads.

It is well to look into this a little. The stock and bonds of this road are at par and above. Average net earnings per mile, $2,709; value of every mile operated on this basis, over $45,000.

The Chicago & Erie was also represented by Mr. Gresham.

The report of the board shows capital stock (at par)	$100,000
Bonded debt	22,300,000
The net earning of the road per mile is reported to the board to be	2,141
On the 6 per cent. earning basis the value per mile is	35,700

The earnings were sufficient in 1890 to leave a surplus, after paying all charges, of over $500,000. This road was listed last year at $2,018,465. It is worth on basis of either earnings or stocks and bonds not less than $5,000,000.

The earnings of this road in 1890 were made while in the hands of a receiver. Such statements as were made by these roads to-day, in the face of the showings made by their own reports, are cause for astonishment.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 20.

(From the Indianapolis Sentinel, August 22, 1891.)

The Big Four's Taxes.--Some Fallacious Points in Mr. Dye's Argument.

To the editor.

SIR: To-day the Big Four system was before the State board of tax commissioners and made the usual statement. Mr. John T. Dye, who was representing the system, said most of the branches were assessed too high and no part of the system ought to be raised. He began upon the Cairo, Vincennes & Chicago. This division has 267 miles, with eight miles in Indiana.

Capital stock	$5,000,000
All owned by Big Four.	
Bonded debt	5,000,000

Worth 90 to 92 in the first six months of 1891.

If the capital stock is worth nothing, the value of the bonded debt at ninety per cent. alone would make the road worth $14,750 per mile—appraised last year at $3,500.

The Cincinnati, Lafayette & Chicago, he said, had not a great earning capacity, and that $7,000, the present appraisement, was too high.

Capital stock, preferred	$1,861,000
Capital stock, common	68,200

Ninety-five per cent. of this stock owned by Big Four.

Bonded debt, first mortgage	1,120,000
Bonded debt, consolidated	1,120,000
Floating debt	242,472

444 The Big Four owns all of the consolidated debt and $258,000 of the first mortgage and has assumed $139,000 of floating debt. Does not this look very much like the Big Four regarded this road as worth, at least, the sum of the face value of its stock and bonds? If so, this road is worth $4,169,200, or over $54,000 per mile. If this is in excess of its value it is still sufficient to show that an appraisement of $7,000 per mile is absurdly low.

Mr. Dye claimed that the Peoria & Eastern appraisement must, by all means, be reduced. He said that it was not the actual earnings but the earning capacity that indicated value. The road made a six per cent. earning on a value of over $46,000 per mile in 1887, but has made little or nothing since that time. The earnings of 1887 show its earning capacity. The fact that property is or has been in the hands of a receiver does not change its value.

The principal argument made in behalf of the Big Four was based upon the statement that the taxes paid by the system amounted to more than three per cent. of its gross earnings. This statement certainly was made without much consideration. If true, there is no other class of property in the State of Indiana that has paid so small a part of its gross earnings for taxes. We think an investigation would show that there is not a farmer in Indiana who does not pay for taxes a greater per cent. of the gross production of his farm. We venture the assertion that the taxes of 1890 upon the average farm in Indiana amounts to from twelve to twenty per cent. of its gross production. The three per cent. of gross earnings the Big Four paid out for taxes includes all non-productive roads belonging to the system.

We have insisted before the board of tax commissioners that, in their valuation of railroad property, they ought to include the franchise; that if they did not then the franchise ought to be assessed specifically.

Mr. Dye said it would be double taxation if all the property of a railroad was assessed and the franchise was also listed. He was very careful in his remarks to ignore the distinction between tangible and intangible property, a distinction with which he is quite

familiar. No one, so far as we know, has been foolish enough to assert that if all the property of a railroad is assessed the franchise ought to be assessed again. When we say all the property we mean all, and that would certainly include the value of the franchise. If Mr. Dye means by all the property of a road all its tangible property, his assertion is absurd, for no principle of law is better settled than the right of a State to tax intangible property. If the board shall conclude to include in the valuation of railroad property the value of the franchise, no separate assessment should be made of it. If, however, they assess the tangible property alone, then we say that there ought to be a specific assessment of the intangible property. We think Mr. Dye fully understands our position. In some way the value of intangible property, or what the law calls "franchises and privileges," ought to be assessed.

It was entirely unnecessary to make an argument against taxing a railroad on what it owes. No one has made any such proposition. It is quite another thing to use the bonded debt of a road and the market value of its stock to determine the value of railroad property as an entirety. Such use of it has been approved by the United States Supreme Court.

445 It may be admitted without argument that the Union Railway Company has added to the improvements of the city of Indianapolis. What has that to do with taxation? Does not every citizen who improves his property or pays for an asphalt pavement in front of it do exactly the same?

The Cincinnati, Wabash and Michigan

was also before the board, represented by Mr. Cowgill.

He made a very fair statement and asked for nothing except that his road should not be assessed at more in proportion than other roads. He thought this road had been appraised relatively high.

Total length of road, 203 miles.

Capital stock	$2,044,000
Worth 75 per cent.	$1,533,000
Bills payable	1,312,000
Value of road	$2,845,000
Value per mile	14,000
Net earnings per mile in 1889	1,231
On a 6 per cent. earning basis the road is worth per mile	20,500
At $1,400 per mile the 168 miles in Indiana is worth	2,352,000

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 21.

(From the Indianapolis Sentinel, August 23, 1891.)

Some Good "Indications" as to Values of Railway Property, which are also "Indications" that Some of the Figures and Arguments Presented to the Tax Commissioners are Highly Misleading.

To the editor:

SIR: To-day Col. How, vice-president of the Wabash system; Mr. Williams, vice-president and general manager of the Terre Haute & Indianapolis, and Mr. Peirce, trustee of the Indianapolis, Decatur & Western, were before the board of tax commissioners. Col. How read a prepared argument to the board, the logical conclusion from which was that there is no reliable way to arrive at the "true value" of railroad property except to rely on the statements of railroad representatives.

The cost is no index, for the cost of construction varies. Gross earnings will not do, for operating expenses are not the same on all roads. Net earnings are of little value, because net earnings depend, in a considerable degree, upon the management, and indicate ability of the management as well as earning capacity. The amount at which a road is capitalized should not be considered, for roads often issue stock for three or four times what all their property is worth. It is immaterial how many bonds are on a road, for roads are often bonded in excess of their value. The price of stocks and
446 bonds in the market gives not the slightest information, because such prices are fixed by gamblers. Such were his arguments. He asserted that a road is only worth a certain part of its securities on which it pays interest. He presented some tables to prove that the last appraisement of real estate in Indiana is not much over half its true value, and without a blush appealed to the board to relieve the railroads of the State from the unjust burden of taxation that has heretofore been imposed upon them as compared with other property.

It is the sworn duty of the board to assess as nearly as possible railroad property at its "true value," but the statements and arguments of Col. How, in effect, was the bold assertion that county authorities had not done their duty and that, therefore, the commissioners ought not to assess his road at over half its value.

A more brazen proposition was never made to a board composed of honorable gentlemen, acting under oath, and trying honestly to perform a difficult duty. Does Col. How not know, as a lawyer, that if what he said about the valuation of real estate in the counties through which his road runs was true, it would be the duty of the board to look into it and, if possible, correct it? In what school of law, or of morals, has he been taught that one wrong is to be righted by the commission of another?

The Colonel was considerably disconcerted when Commissioner Walker informed him that the board had official information before it that proved that the real estate in the counties through which his road runs was appraised at its full value.

The Wabash operates 1,921 miles, 1,304 east and 616 west of the Mississippi. There are 165 miles of the system in Indiana.

Capital stock, preferred	$24,000,000
Capital stock, common	28,000,000
Lowest price of preferred on first six months of 1890, 25 cents	6,000,000
Lowest price of common in the same period, 12½ cents	3,500,000
Total stock value	$9,500,000
Bonded debt	78,000,000

During the first six months in 1890 the fluctuations in the Wabash bonds was less than four per cent., except the debenture income, series B, in which the fluctuations amounted to six per cent.

Every one of the bonds was during the time above par, except second-mortgage gold 5's, 1939, the lowest price of which was 80¼, and debenture income, series B, the lowest price of which was 47. If the entire debt is included at its market price it will be found to exceed $69,000,000. Add to this the market value of the stock, and the value of every mile of the whole 1,921 miles, good, bad, and indifferent, is on this basis over $40,000.

The net earnings per mile for 1890 were	$1,914
On a 6 per cent. net earning basis as measured by the earnings of 1890 every mile of road is worth	31,900
And the 165 miles in Indiana worth (including all property of course)	5,295,400

It is questionable whether this is up to the "true value" of the property of this system in Indiana. It was listed last year at $2,919,445 (page 112 of report of board of equalization).

447 Mr. Williams set up a man of straw and with gravity proceeded to belabor him. He beat the stuffing out of an imaginary proposition for an arbitrary rule and paused in admiring contemplation of his own prowess.

Who has been fool enough to propose a six per cent. earning basis as an "arbitrary rule"?

"Values may be indicated, but cannot be established," said Mr. Williams, "by any such rule." Precisely! We have pointed out to the board that the net earnings of the Terre Haute & Indianapolis for a period of nine years indicated that the value of the road is over $50,000 per mile. We also pointed out that this indication was strengthened by other indications; that the price of stocks and bonds indicated a value of $52,000 per mile; that the general balance-sheet indicated a value of about $57,000 per mile. The aggregate result of the indications is that the road is worth not less than $50,000 per mile, and that the valuation of last year was over $2,000,000 below a "true value."

If Mr. Williams has any contra-indications, why does he not present them to the board?

It is the duty of the board to consider anything "in the heavens,

in the earth, or under the sea" that will assist them in determining the true value. Walk up, Mr. Williams, with your indications.

Mr. Williams said the Terre Haute & Logansport road never had any net earnings, but that the expenses of operating the road exceeded its gross earnings. He ought to go home and at once discharge the fellow that made the reports from which the statements in Poor's Manual for the last three years were taken. In 1888 the net earnings were 13.16 per cent. of gross receipts; in 1889, 20.27 per cent. and in 1890, 24.70 per cent.

The net earnings per mile for 182 miles, including the Terre Haute & Evansville, *was* last year $804. This indicates the aggregate value of the Terre Haute & Logansport and Terre Haute & Evansville to be $13,400 per mile, or $2,448,180 for the whole line.

The road is leased by the Terre Haute & Indianapolis, the rental being twenty-five per cent. of the gross receipts. He said an open confession was good for the soul, and that this lease was an awful mistake. Somebody gets the benefit of this mistake. Who is it? The Terre Haute & Indianapolis has leased the road. Who owns it? Substantially the same parties who own the principal road. It is calculated to provoke a smile when the names of the different boards of directors are read.

Mr. McKeen, Mr. Williams, *et al.*, owning and controlling the Terre Haute & Logansport, have leased the road to Mr. McKeen, Mr. Williams, *et al.*, owning and controlling the Terre Haute & Indianapolis. What an awful mistake. The irremedial character of it is appalling. Here is openness and frankness for you. The State board of tax commissioners ought to give these suffering people relief, of course.

Mr. Peirce, trustee for the Indianapolis, Decatur & Western, made a very candid statement to the board, and answered its questions without evasion. His frankness was refreshing, after the speeches of the forenoon. When asked how he would arrive at the valuation of a railroad he said, in substance, that it was a difficult matter, and he did not envy the board its task; that it could not be determined from any one thing, but that any and everything affecting the road must be taken into consideration.

448 He thought his road was assessed high. It was assessed last year at $514,550 for seventy-six miles.

Cost of road and equipments	$5,287,839
Capital stock	1,000,000
Funded debt	4,218,000
Net earnings per mile in 1890	592

This indicates, on a six per cent. earning basis, a value per mile of $9,700. This is less than the valuation shown by the earnings of 1888 and 1889 by over $3,000 per mile. The entire assets were appraised last year at $6,880 per mile. So far as these indications go, this road is appraised higher, in proportion to its value, than many other roads, but still not up to its true value.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 22.

(From the Indianapolis Sentinel, August 25, 1891.)

The Railroads Now Preparing to Stand Each on Its Own Bottom.

To the editor:

SIR: Judge Field appeared before the tax commissioners to-day for the Louisville, New Albany & Chicago road. He had observed that the methods for assessing railroad property were as numerous as roads. In substance he told the board that the value of railroad property was to be assessed like other property, taking into consideration circumstances and conditions that are peculiar to it.

He made a number of statements with a view of securing a favorable valuation. He said the fifty-five miles from Marion to Michigan City *was* of little value.

Whatever may be the value of that particular part of the road, the aggregate value of the line is pretty clearly indicated by the gross and net earnings. This road was, no doubt, as Judge Field stated, built to sell. It was a wretchedly built road. It has required a large amount to keep it in repair. Nevertheless, its net earning per mile last year was $1,951. On a six per cent. earning basis this shows every mile of the road, including the fifty-five miles, to be worth $31,500. Its entire assets were appraised last year at $8,500 per mile. Its ties may be hemlock, its rails scrap iron, and it may run around all the hills in southern Indiana instead of through them, but this earning was made upon the road as it is, and is a strong indication that the value of its property, tangible and intangible, is not less (it may be more) than $31,000 per mile.

Capital stock	$5,000,000
Lowest market price in five years, 30 cents	1,500,000
Funded debt	12,800,000
This entire debt was above par during 1890, making the value of the entire road	14,300,000
Cost of road and equipments	15,959,478

This indicates a value per mile of 539.57 miles, very nearly that shown by the net earnings.

449	The aggregate value of the 451 miles in Indiana is thus indicated to be over	$14,000,000
	Assessed last year at	3,861,131

After Judge Field came the Sophomore of the Monon, who proceeded to harangue the board concerning the great benefit railroads are to the public. He said that by the law and judicial decree they were held to a duty to the public, and if by taxation they were prevented from performing that duty, then they ought not to be taxed.

Will we never hear such nonsense for the last time? Does not Mr. Kreutzinger know that such stuff as this was no more a compliment to the board than it was a credit to him?

The Ohio & Mississippi came next, with Judge Gardiner as spokesman. He said his road was too proud to shirk any part of its proportion of the public burden, and he only wanted it assessed as low as other roads. When he got warmed up to the interest of his for-

eign stockholders he forgot all about the pride of the road, and plead poverty right vigorously. The road could not be put in good condition because of the interest and taxes that had to be paid. Side tracks were in bad condition, and the road had no good depots and a part of them were nothing but old freight cars.

Net earnings per mile for 1890	$2,072
Value of road per mile on 6 per cent. basis	34,800

According to the report in Poor's Manual (page 408), 1891, it cost over $64,000 to construct and equip this road.

Capital stock, common	$20,062,692
Preferred	4,030,000
Lowest price in 1890, 20 cents	4,816,538
Bonded debt, most of it worth a large premium, it is safe to count it at par	16,346,000
Total value of road on this basis	$21,162,538

Thus indicating, by the stocks and bonds, that the aggregate value of the road is equal to $34,000 per mile, only a little lower than the earning value. At this rate the 233 miles in Indiana are worth $8,108,400, appraised last year at $3,159,347.

The Chicago & Grand Trunk was represented by Mr. Spicer. He presented the usual excuses. The company had had great difficulty in meeting its obligations, and that the stockholders had never received a cent. The result of last year's business had been very unsatisfactory. This was all he had to say, and what the board will get out of it to aid them is difficult to see.

We are a little curious to know what would be satisfactory to Mr. Spicer. The net earnings per mile last year *was* $3,234.

On a six per cent. basis this makes every mile of his road worth about $54,000, or the eighty miles in Indiana, $4,320,000. Appraised last year at $1,468,338, or less than $18,500 per mile.

It does not look like Mr. Spicer had been very frank in his representations.

450 The Toledo, St. Louis & Kansas City road was represented by Mr. S. O. Bayless. He repeated statements made by so many other roads, that he might as well have said "ditto" and sat down.

The net earnings of this road in 1890 *was* $1,125 per mile for the whole line of road. On a six per cent. basis this indicates a value per mile of $18,750. The stock of this company is not listed at all. The bonded debt is $9,800,000. The lowest in 1890 was 97½. This alone would make the aggregate value of the road per mile over $21,000, and together with the earning value gives a very strong indication that the part of the road in Indiana is worth not less than $20,000 per mile, making the aggregate of the 171 miles in the State $3,420,000 instead of $1,182,210, at which it was valued last year.

Dr. Moore, in voicing the miseries of the Midland, has the ad-

vantage of the board. Unless they go over the road there is not much show for them to know more about it than Dr. Moore told them. It will give the board or anybody else trouble to even guess what it is worth. It is worth something, of course, but what we have not the ghost of an idea.

It is apparent that every railroad representative who has been before the board expects his valuation to be raised, but Mr. Hawkins, of the Chicago & West Michigan, is entitled to the credit for being the first to say it. He only expects a moderate raise. What he would consider moderate he did not intimate. The whole line of his road is one hundred and forty-eight miles, with only thirty-four miles in Indiana. The average net earnings per mile for the whole line in 1890 was $1,262, indicating a value per mile of $21,000. The valuation of all the property of this road in Indiana last year amounted to a little over $7,000 per mile. The indications are that it will stand a considerable increase and not be above its true value.

Mr. Hall, tax agent for the New York, Chicago & St. Louis (Nickel Plate), submitted a very valuable table to the board, intended to show the relative value of roads in the State on gross and net earning basis. While this, of course, cannot be adapted as an arbitrary rule, and must be considered in connection with many other things, it probably furnishes the best basis upon which to equalize the valuation of railroads among themselves. Mr. Hall was very fair and frank with the board, but claimed that while his road might not be assessed too high—it was relatively higher than other roads in the State. He said in substance that the last appraisement of railroads in the State was unequal. Relatively some were too high and some were too low. That he is right there can be no question. He might have gone further and said that, as compared with the valuation of other property, the valuation of railroad property was all too low last year.

His road—he said—was by no means a good piece of property. Its net earnings per mile for last year *was* $2,097, or six per cent., and shows a value per mile of $34,950. The aggregate valuation of all its property last year was over $16,000 per mile. The valuation of this road could be doubled and not exceed its true value, and yet Mr. Hall is right when he says this road is now higher, relatively, than many other roads.

It is encouraging that there is a disposition on the part of
451 some railroad men to assist the board in its difficult task. Railroad representatives dislike to say anything about any other road, but to-day there was a disposition on the part of some roads to speak out freely.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 24.

(From the Indianapolis Sentinel, August 26, 1891.)

Mr. Du Barry's Plea—Some Decided Inconsistencies Pointed Out.

To the editor.

SIR: Mr. Du Barry, who has for several years represented the Pennsylvania system in Indiana, was to-day reinforced by Mr. Brooks, vice-president and general counsel. Mr. Du Barry submitted a mass of figures, the purpose of which was to show that the part of the system in Indiana had very much less earning capacity than the part outside of the State.

He figured gross earnings in and out of the State until everybody grew dizzy. The Pan Handle is divided into divisions, and he attempted to show that the part of each division out of the State earns much more than the part within the State. It will be a surprise that Indiana has so little in it that is of any value. Notwithstanding the entire Pennsylvania system earns enough each year to pay six per cent. on a valuation of $100,000 per mile for every mile of the five or six thousand miles operated, Mr. Du Barry would have the board believe that Indiana furnishes relatively very little of that earning. He was accommodating enough to fix values for different parts of his roads in Indiana, but none of his values exceeded twenty-five or thirty per cent. of the value indicated by the earnings. We are gratified that what we have been insisting upon for five years is now admitted by this and several other principal roads represented in Indiana—that the earnings furnish a very reliable basis upon which to estimate the value of a road. He seemed to desire the board to consider it the most reliable basis.

By skillful argument of men skilled in railroad management it is sought to discredit every other way in which value may be determined. Mr. Brooks said that cost of construction was no index, for roads often cost more to construct than they were worth when done. The cost alone may not always be a safe guide, but does Mr. Brooks mean to say that when considered with other indications cost would be of no assistance?

The market value of stocks and bonds *are* of no use in his estimation, because it is well known that the value of the road does not determine the amount of stock issued or the amount of bonded indebtedness. It would appear that a man of his information ought to see the fallacy of such a proposition. As a general rule it is too plain for argument that, whatever be the amount of stock or the amount of property represented by it, the value of the stock will be determined by the amount of property. There may be circumstances causing the stock to fluctuate in some degree, but
452 after all, its value in the market is a tolorably sure index to the opinion of the market concerning the value of the property represented. It is idle to say that because there are some instances in which the market has been deceived that the market price is no index to the value of the property represented by the stocks and bonds.

We called attention in our brief to the estimate put on the value

of certain roads in Indiana, as indicated by the guarantee of their stocks and bonds by the Pennsylvania and other roads, and Mr. Brooks took occasion to say that the guarantee of a wealthy corporation like the Pennsylvania Company, or Pennsylvania Railroad Company, would give the stocks or bonds guaranteed a value not represented by the corporate property.

He said that during 1889 and 1890 the bonds of the Pittsburgh, Fort Wayne & Chicago were worth in the market about 150. They are guaranteed by the Pennsylvania Company. Does this indicate nothing as to the value of the property of the Pittsburgh, Fort Wayne & Chicago? Does it not at least indicate that the Pennsylvania Company estimated the road to be worth the face of the bonds guaranteed?

Taking the methods of business generally, does it not indicate that in the judgment of the guarantor, the property of the road is worth not only the face of the bonds but a fair margin above? While we have been insisting that net earning is one of the most reliable indexes to the value of railroad property, we are by no means disposed to admit that it is the only index. It might occur, it does occur, sometimes, by reason of some of the very facts stated by Mr. Brooks, that net earning- are not a true index. If a road charges all its constructions and betterments to its expense account, as he stated some roads do, the net earning will show a value below the true value. This much, however, can be relied upon, that the value shown by average net earnings during several years cannot be too high. It will never be greater than the true value, but may be less. It has seemed to us that the market value of stocks and bonds in many cases are of equal reliability in determining value. An investigation of the stock market does not justify what has been said by these gentlemen. The stocks and bonds of many of their roads have had a price quite as constant and attended by as little fluctuation as any commodity in the markets of the world. Are these prices purely fictitious, as stated by Mr. Brooks to-day and Mr. Williams a few days ago? If not, what fixes the price of them? There is nothing clearer than that the price, under such circumstances, is the judgment of far-seeing and thoughtful men concerning the ability of the road to pay interest and dividends, and pay principal when due. It is the judgment of such men that makes market prices. We can readily understand that each road would be very likely to recommend that particular method that would be most favorable to it. The road charging all its constructions and betterments to its expense account would be likely to want net earnings for a basis instead of gross earnings.

That part of this system, so far as it affects Marion county, we have called attention to in our brief heretofore published; but look at this showing of the Pittsburgh, Ft. Wayne & Chicago:

Average net earnings per mile for a period of nine years ending 1890	$7,083
Value per mile on a 6 per cent. basis	116,000

453 No wonder they want to figure a part of their net earnings out of the State.

Capital stock, common	$19,714,285
Guaranteed, special	12,376,512
Total	$32,090,797

Every dollar of the stock has paid seven per cent. per annum dividends for the last eight years.

The guaranteed special has not been worth less than $1.41 for four years, making the stock value $36,641,401. The bonded debt of this road amounts to over $14,000,000, and not a dollar of it has in five years been lower than $1.38.

Estimate this at par, and the whole value of the road is $50,646,401, or a value of $101,000 per mile.

If the construction account is examined it tells about the same story.

Are not all these methods of some use in determining the true value of this road? It is worthy of attention that the guaranteed stock of over $12,000,000 are not guaranteed by the Pennsylvania Company, but that such stock is held by the Pennsylvania Company as lessee and that the guaranty is by the lessor, thus showing in a most unmistakable way the estimate the Pennsylvania Company puts on this property.

In no possible view is the aggregate property of this road worth less than $100,000 per mile.

All that can be said for the figures of Mr. Du Barry is that they were cunningly devised; or for the arguments of Mr. Brooks, is that they were shrewdly constructed. The one hundred and fifty miles of this road were appraised last year at a little over $37,000 per mile for all its property in Indiana.

The Elgin, Joliet & Eastern was represented by some gentleman whose name we did not get. The usual plea—the earning end of road outside the State—the twenty-one miles in the State an incumbrance on the other part.

The net earnings per mile for the whole line amount to $940. On a six per cent. basis every mile is worth over $15,700; listed last year at $7,000 for all property.

The Chicago & Eastern Illinois has a batch of little worthless roads in this State. Outside of the State, all right, but terrible stuff in the State.

The Evansville, Terre Haute & Chicago, Indiana Block Coal and Chicago & Indiana Coal were the roads represented; all leased by the Chicago & Eastern Illinois, and all, as shown by Poor's Manual, in good condition financially. An examination of the leases will indicate that the lessee did not regard them as dead weight. Mr. Lyford wanted a reduction. Not one of these roads, we venture the guess, is listed at anything near its true value. These are part of the same roads represented by Mr. Mackey a few days ago.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 25.

454 (From the Indianapolis Sentinel, August 27, 1891.)

The Statements Analyzed—What Marion County's Attorneys Think of Yesterday's Work.

To the editor.

SIR: Mr. Meagher, representing the Michigan Central, made an earnest statement of what he said was an injustice done his road last year. It must be admitted that relatively his road has been assessed much higher than either the Lake Shore or the Pittsburgh, Fort Wayne & Chicago. There are forty-three miles of his road in Indiana. The average annual net earnings per mile for eight years has been $2,022. On a six per cent. earning basis this indicates a value of $33,700 per mile for the entire assets of the road.

The capital stock is	$18,738,204
The market price has not in five years been as low as 60 cents and during 1890 it has been above 90 cents. If estimated at 75 cents	14,053,500

The bonded debt amounts to $18,376,000. Most of the bonded debt of this road has for five years been above par, making the total value of the road on this basis $32,429,500, and shows the stock and bond value to be about the same as that indicated by its net earnings. The aggregate valuation last year of all the assets of the road in Indiana amounted to $35,650 per mile. According to these indications this road was appraised last year at its full value. We venture the assertion that it furnishes the only instance of the kind in last year's appraisement.

The Michigan Central controls the Joliet and Northern Indiana, 45 miles in length, of which 15.47 miles are in Indiana. This road is leased to the Michigan Central at a rental of $89,000 per year.

The stock pays eight per cent. annual dividends.

Capital stock	$300,000
Funded debt	800,000
Total	$1,100,000
And represents the cost of the road—cost per mile	24,444
Valued last year at	14,937

The Michigan Central also controls the Michigan Air Line. Length 115 miles, of which there are 6 miles in Indiana. Leased to the Michigan Central at a rental equal to interest on its bonds.

Capital stock	$4,000,000
Bonded debt	2,600,000

It is difficult to make an estimate of the value of such a road. The terms of the lease indicate that the Michigan Central thought the road was worth more than its bonded indebtedness. The road is bonded for over $22,500 per mile. What is the value of this road above the bonded indebtedness will depend upon facts concerning which Mr. Meagher gave no information.

The aggregate valuation of all property of this road last year was $13,370.

Mr. Penniman, representing the Baltimore, Ohio & Chicago, presented its claim for a reduction of last year's valuation. He recognized that the market price of stocks and bonds is an indica-
455 tion of more or less reliability in determining the value of railroad property, and from this basis attempted to show that his road was not of much value. There was no market price of stocks. He, however, disclosed the fact that the Baltimore & Ohio held the controlling interest in them. This is a fact also to be taken into account of which he seemed oblivious. It explains why it is that the bonds have no market price. To the Baltimore & Ohio they are worth par for the purpose of controlling the road. The net earnings of this road indicate a value of over $22,500 per mile, but the statement of Mr. Penniman makes it very clear that this is one of the cases where the net earnings show a value far below the true value of the property. The Baltimore & Ohio, while it owns a controlling part of the stock, does not own it all, and a game of "freeze out" is now being played. Whatever this road as a corporation is losing, the Baltimore & Ohio has not suffered, and will not suffer. The stocks and bonds of this road at par amount to about $35,000 per mile, and Mr. Penniman's fear that the board might take this as a basis, and his effort to show that the stocks held by the Baltimore & Ohio were worthless, was very suggestive.

"The stocks and bonds are a very strong factor in determining the value of railroad property," said Mr. Penniman. Quite a different statement from that made by Mr. Brooks and Mr. Williams a few days ago. It appears tolerably clear at this stage of the investigation that, with the railroads, it is "every fellow for himself."

Mr. Fenton, who represented a few miles of worthless (?) property close to Chicago, known as the Chicago & Calumet Terminal, added to the confusion by frankly admitting, what everybody of any information knows, that railroads have not paid their proportion of taxation in the State. This brought Mr. Meagher to his feet with a bounce. He was a little sore anyhow over the work of last year, and a very slight touch made him wince. And it does really look as if somebody had "had it in for him" last year.

From our standpoint there was little else of interest to-day.

A number of railroads, among the number the local roads—Indianapolis Union Railway Company and the Belt Railroad and Stock Yard Company—have not yet appeared.

The Belt has not even made a report for several years and it is about time it was being made to do so. It has paid taxes on nothing but its real estate. Marion county would like to hear from it. The public are interested in knowing more about its internal affairs. It will be interesting to know what its income was in 1890. The fact that it has leased a part of its franchises and all its tracks to the Union Railway Company does not release it from the duty of making a report. Any such idea is a mistake.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 26.

(From the Indianapolis Sentinel, August 28, 1891.)

Must Stand Alone—No General Rule Can be Made to Apply to All the Railroads.

To the editor:

SIR: The tax commissioners are struggling manfully, but are overwhelmed by the magnitude of the work before them.
456 Under the law they have many duties and grave responsibilities that require the most careful investigation and thoughtful consideration. The time allowed by law is wholly inadequate.

The valuation of railroad property alone, if given the consideration the importance of the subject demands, would consume the whole forty days allowed and more.

If the statements made before the board by the representatives of railroads demonstrate anything clearly, it is the utter futility of any attempt to devise any fixed method to determine the value of railroad property. Gross earnings, net earnings, cost of construction, par value and market value of stocks and bonds, each has its use; but there are a multitude of other facts likely to exist and circumstances likely to occur peculiar to each particular property that will modify the indications. A thorough investigation is necessary of each particular road.

Railroad representatives do not agree among themselves. Their choice of methods by which to arrive at the true value of their property is very likely to be determined by the interest of the road.

There are many facts that they will not willingly disclose. There is much of which they will give the board no information voluntarily.

For example: A few days ago the representatives of the Big Four were before the board and made statements concerning the different branches of that system. Among other things, to give the board some idea of the value of the Fairland, Franklin & Martinsville branch, it was stated that the road was bought for $50,000. It was not stated that in the consolidation by which the present Big Four system was formed, this branch was estimated at a much larger amount. We are informed it was put in at $600,000. One fact was just as important to the board as the other. Yet one was given and the other was withheld.

The system of reports to the State auditor ought to be revised and the scope of questions to be answered widened, but with the facts before it we believe the board will be able to approximate a true valuation.

What the board will do remains to be seen. It ought not to require much time or much investigation to come nearer a true valuation of railroads in Marion county and the State than any appraisement for the last ten years.

VAN VORHIS & SPENCER, *Attorneys.*

Indianapolis, August 27.

(From the Indianapolis Sentinel, September 2, 1891.)

Poor Mr. Ijams—He is a Public Benefactor and Entitled to Consideration.

To the editor.

SIR: After a long delay and the issue of a subpœna Mr. Ijams, of the Belt Railroad and Stock Yard Company, appeared before the tax commissioners to-day. He had nothing to say, he said, and so what was got out of him was by the method of cross-examination. It is a matter of considerable interest sometimes to see how little a man knows about his own business. He had no idea how many cars were loaded or unloaded at the stock yards, and did not know whether his books would show. He did know that they got
457 20 cents for every head of cattle, 10 cents for calves, 10 cents for sheep and 8 to 11 cents for hogs that went into the yards, and that the Union Railway Company paid the Belt 50 cents for each deck of live stock both loaded and unloaded at the yards. It was also disclosed that any man who is so unfortunate as to take his stock to the yard is required to pay $1 per bushel for corn and $30 per ton for hay, no difference if corn can be bought in the city for 25 cents and hay for $10 per ton. He said the net earnings of the Belt was about $100,000 last year, but on more particular inquiry it was learned that Mr. Ijams' idea of net earnings was that when he had paid all interest on bonds and for all improvements and betterments, and expended about all he wanted for any other purpose his interest might dictate, what he had left was net earnings, and this was the way he had $100,000 of net earnings. He had $100,000 he did not want to spend and he called that net earnings. The interest on the bonds he said was $60,000. It is clear then that, to say the very least, the net earnings were $160,000 last year. What other expenses he had taken out of net earnings in this way he could not be induced to state. His knowledge was deficient and his memory failed. As little as he seemed to know and as bad as his memory was he disclosed some things of which he did not seem conscious. He said that they had handled about 1,500,000 head of live stock last year (we do not believe this statement is large enough) and this alone would bring the company, at 10 cents per head, $150,000. Then add to this $45,000 rent from the Union Railway Company and the income from the cars of live stock loaded and unloaded, amounting, in all probability, to over $50,000, to say nothing of the amount derived from the sale of feed, and some little idea is gained of the enormous income of this corporation, that, according to Mr. Ijams, has no object under heaven except to build up trade and improve the country generally, and as a great public benefactor furnish a market. "I am not a selfish man; everybody that knows me knows that." Oh, no! the captain has no selfish purpose. It is a mere matter of accommodation when a farmer takes his stock to his yards that he sells him corn at $1 per bushel and hay at $30 per ton. But if the farmer desires not to impose upon the very generous Mr. Ijams and proposes to step over the way and buy corn and hay, he will be informed that that is against the rules. The cap-

tain is not only generous, but he insists on accommodating the farmers at 200 to 300 per cent. profit.

In consideration for all this generosity, and for all the great things he has done for the public, he says he is entitled to consideration at the hands of the tax commissioners; that he ought to be let off easy when they come to consider his case.

He thinks that the five or six millions of property which he controls in this Belt Railroad and Stock Yard Company ought to be let off at an appraisement of five or six hundred thousand, all in consideration of the good he has done Marion county by this monopoly that has flooded the county with third and fourth rate meats and made it difficult to get a decent beefsteak. Of course if this board wants to do the farmers of Indiana a favor (?) it will let the Belt railroad and stock yards go free of taxation.

It appeared that the captain had also been cited to enter an appearance and answer questions in regard to his one-hundred-and-five-thousand-dollar horse, Axtell, that was returned over in Vigo
458 at $500, and on which, according to his own statement, the income last year was $54,000. Mr. Ijams was greatly interested in the improvement of stock (?) in the State, and it would give a black eye, he said, to all the stock-raising interests to increase the assessment on this horse. This horse was a thoroughbred and he had brought him into the State solely on account of his State pride. We could not help thinking of Josh Billings' definition of a thoroughbred: "A horse trained in a sulky containing a fellow with a long whip until he ain't worth eighteen cents for anything but a gambling machine." This is about Mr. Ijams' idea of improving the stock of the State. And on account of this he says he is entitled to some consideration, and the grinning idiots over in Vigo who are fools enough to complain about Axtell's return at $500 and want him appraised at somewhere in "gunshot" of what Mr. Ijams thought he was worth, or at least a little above one-tenth part of his earning capacity last year, are standing in their own light and greatly hindering the improvement of stock in Indiana.

Mr. Ijams' unselfish effort to improve the stock of Indiana at the rate of $1,000 per head does not seem to have been met in the way such great generosity demanded. Only one man in Indiana, W. R. McKeen, took four chances.

Of course the board will not tax this horse at over $500 or the Belt railroad at over $600,000; of course not!

It would be an outrage. (?) It would stop the wheels of progress. He might even remove his "gambling machine" out of the State. There is great danger that he might conclude to remove the stock yards. Worst of all, he might conclude to go himself, and then, oh, how we would miss his great ability and brain.

VAN VORHIS & SPENCER, *Attorneys.*

September 1, 1891.

(From the Indianapolis Sentinel, September 14, 1891.)

The Tax Board's Work—For Once the Railroads Will Pay Their Share of the Taxes.

To the editor:

SIR: The work of the State board of tax commissioners is ended. For the first time in the history of this State the railroad property in it has been appraised for taxation with reasonable approximation to a true valuation.

The task was a difficult one, but it was taken hold of with a will and determination to master it as near as possible within the inadequate time allowed by law. It is altogether possible that there are some inequalities in the work. There are so many difficulties in collecting all the facts concerning railroad property necessary to its correct valuation that absolute correctness in the performance of such a task as was set before this board could not reasonably be expected. The difficulty was immeasurably increased by the very short time into which the board was compelled to crowd the work. It will be found, we predict, that this board has come nearer a proper equalization of railroad property with other property of the State, and a just equalization as between the different railroad companies than has ever before been made in this State or anywhere in this country.

Outside of those directly interested in railroad property there is a general expression of satisfaction, and every member of the board is given credit for the faithful and conscientious effort made and determination manifested to do that which was right under the law and his oath.

The board heard with marked attention all railroad representatives that desired to appear before it, and with avidity gathered facts from every source.

459 Whether we have, as the representatives of Marion county, been of any assistance to the board in the performance of its duties, we rejoice in the result as a triumph of the right and as an evidence of official integrity, and desire to express our appreciation of the uniform courtesy shown us by the board and each member of it, and for the time accorded us and the attention given us in the presentation of the interests of Marion county.

It is stated in a "special" from Vigo that it is "accepted as a matter of fact" that there will be a combination to resist the collection of taxes on the basis of the appraisement made by the State board. Such a course may be expected if there is the slightest possible show for success in the courts. The combination most to be feared, however, will be the combination of railroads and some other corporations that will appear at the meeting of the next legislature to induce it to change the basis of taxation of all such corporate property.

The present indications are that an effort will be made to change the basis to one of gross earnings. In fact, that scheme has already been begun. In the last General Assembly a resolution was intro-

duced looking to the amendment of section 1, of article 10, of the constitution of the State, by adding to it the proviso:

"That corporations may be taxed upon their net or gross earnings in such manner as may be prescribed by law."

This is the railroad scheme. The facts before the board of tax commissioners clearly demonstrate that if railroad property is to be required to pay its equal and fair proportion of the public burdens, it must be appraised like any other property. It is idle, worse than idle, by any "arbitrary rule" of appraisement or taxation, to attempt to get out of them what in common justice they ought to contribute to the support of the State.

By a systematic method of concealment they make it difficult to determine the true value of their property, and then use this difficulty as an argument for the adoption of some such rule as that based upon net or gross earnings. This proposed amendment ought to be defeated, for while net and gross earnings may be useful elements in determining the value of corporate property, they are too easily manipulated to furnish a reliable basis for taxation.

There is something very peculiar about the "special" from Vigo. It is figured out that the time consumed by the board in raising the assessment on "Axtell" cost more than the taxes received from the increase. According to this kind of nonsense a thief ought not to be prosecuted for stealing unless by so doing the money can be recovered, and not then if the prosecution will cost more than the amount stolen. If there was any doubt about the origin of the "special" it would be dispelled when the statement is read in it that "the farmers of Vigo feel that they have been outraged" by the increased assessment on "Axtell" and one of the banks in the county.

There is but one brain in the State from which such nonsense might be expected to originate. The unfortunate possessor of that brain cannot, however, be blamed for it, for money will not buy a brain. If it would, he probably would have a better one.

The threat is that the corporations will combine and resist the collection of taxes and cause the State to lose in the end by trouble and delay.

Corporations are but the creatures of the State. The very existence of a corporation is a "privilege and a franchise."

It is time it was determined who is to be ruler—the creature or the creator. If the struggle must come let it come now. What the result will be is not doubtful. When the people are fully informed, and they will be, corporate property, railroads and all, will pay its share (it ought to pay no more) of public burdens. Sooner or later the truth will be known and the right will prevail. Let no man be foolish enough to doubt it.

VAN VORHIS & SPENCER, *Attorneys.*

September 12, 1891.

Names of roads.	1890.		1891.		Increase over 1890.
	Total assessment.	Average per mile.	Total assessment.	Average per mile.	
Attica, Covington & Southern	$78,051	$5,395	$140,827	$10,215	$62,776
Baltimore, Ohio & Chicago	2,011,750	13,746	4,609,895	38,332	2,598,275
Bedford & Bloomfield	78,519	1,898	291,914	7,057	213,395
Belt Railroad (Indianapolis)	530,880	43,947	2,910,000	304,712	2,379,120
Cairo, Vincennes & Chicago	35,710	5,213	82,440	12,035	46,730
Chicago & Erie	1,018,465	12,634	5,611,131	35,059	3,582,720
Chicago & Calumet Terminal	69,358	9,755	74,890	10,401	5,534
Chicago & Indiana Coal	1,418,770	8,620	4,451,355	27,063	3,032,585
Chicago & Grand Trunk	1,468,335	18,244	3,044,988	37,834	1,576,653
Chicago & West Michigan	241,277	7,001	410,680	11,918	169,403
Cincinnati, Hamilton & Indianapolis	884,140	11,297	2,740,382	35,017	1,856,292
Cincinnati, Lafayette & Chicago	273,155	11,500	883,085	37,140	608,930
Cincinnati, Richmond & Fort Wayne	633,950	7,391	1,861,805	21,701	1,227,355
Cincinnati & Southern Ohio River	29,235	7,941	36,852	11,208	7,617
Cincinnati, Wabash & Michigan	950,880	7,300	1,823,349	10,816	872,469
Cleveland, Cincinnati, Chicago & St. Louis:					
Indianapolis division	1,437,340	17,134	2,998,056	35,757	1,560,716
St. Louis division	1,205,780	14,983	2,814,679	34,978	1,608,899
Chicago division	2,296,650	14,889	5,387,221	34,355	3,090,571
White Water division	276,075	4,435	558,575	8,971	282,475
Lawrenceburgh branch	26,950	9,226	36,565	12,568	9,625
Harrison branch	7,200	5,831	10,160	12,555	2,960
Columbus, Hope & Greensburgh	187,580	7,725	395,487	15,286	270,907
Eel River	846,176	8,514	1,667,785	16,860	821,609
Elgin, Joliet & Eastern	146,600	8,882	476,930	22,530	330,330
Evansville Belt	52,820	5,802	79,450	17,854	53,630
461 Evansville & Indianapolis	563,965	4,125	1,713,254	12,645	1,149,289
Evansville & Richmond	293,020	3,151	1,042,365	10,262	749,345
Evansville, Suburban & Newburgh	48,220	4,424	154,185	14,142	105,965
Evansville & Terre Haute	1,975,902	12,252	3,870,936	24,081	1,895,034

Evansville, Terre Haute & Chicago	443,900	10,282	1,119,310	25,927	675,410
Fairland, Franklin & Martinsville	272,290	7,122	428,417	11,206	156,127
Fort Wayne, Cincinnati & Louisville	773,580	6,027	2,246,747	17,481	1,473,167
Fort Wayne & Jackson	518,140	9,794	1,114,157	20,907	592,017
Grand Rapids & Indiana	631,790	11,890	1,016,326	19,136	384,536
Henderson Bridge Company	282,662	29,474	627,660	66,380	344,988
Indiana Block Coal	68,320	5,371	155,724	12,242	87,404
Indiana, Illinois & Iowa	189,493	3,848	405,505	8,235	216,012
Indiana & Illinois Southern	110,000	3,437	338,050	10,581	228,650
Indianapolis, Decatur & Western	514,550	6,747	1,498,162	19,645	983,612
Indiana & Lake Michigan			116,605	8,188	
Indianapolis Union	579,000		3,064,000		2,485,000
Indianapolis & Vincennes	736,550	6,299	2,456,654	21,011	1,720,104
Island coal branch, I. & V.	57,960	4,047	174,930	14,741	116,970
Gosport branch, I. & V.	16,720	4,000	52,907	12,275	36,187
Joliet & Northern Indiana	231,075	14,290	759,609	16,781	28,534
Kentucky & Indiana Bridge Company	59,800		206,230		146,430
Lake Erie & Western	2,880,910	9,084	5,558,943	17,531	2,678,033
Lake Shore & Michigan Southern	4,356,530	28,485	8,141,335	25,516	3,784,795
Louisville, Evansville & St. Louis	1,610,098	7,681	3,814,918	18,203	2,204,820
Louisville & Nashville	431,334	15,225	795,831	27,668	364,497
Louisville, New Albany & Chicago	3,861,131	8,531	9,400,015	21,023	5,628,884
Louisville, New Albany & Corydon	37,250	3,239	81,187	7,645	43,937
Louisville Bridge Company	80,000		240,000		160,000
Louisville & Jeffersonville Bridge Company			80,635		
Michigan Central	1,511,490	35,650	1,504,251	35,700	*
Michigan Air Line	80,220	13,235	79,220	13,072	*
Midland	253,950	3,418	518,046	6,728	265,095
462 New Albany, Belt & Terminal			200,010	80,000	
New Albany Highland			20,000	16,806	
New York, Chicago & St. Louis	2,452,218	16,237	5,289,326	35,024	2,837,108
Ohio Valley	24,348	5,742	53,412	12,557	29,064
Ohio & Mississippi	3,159,347	13,542	6,541,203	28,038	3,381,856
Orleans, West Baden & French Lick	94,240	5,324	187,040	10,567	92,800
Peoria & Eastern, Western division	719,035	9,150	2,434,938	30,081	1,715,903
Peoria & Eastern, Eastern division	678,655	8,743	1,938,897	25,922	1,260,242
Peoria, Decatur & Evansville	293,114	7,771	659,381	17,480	366,267
Peru & Detroit			65,620	9,038	
Pittsburgh, Cincinnati, Chicago & St. Louis	8,432,400	13,030	22,666,470	35,010	14,234,070

*Michigan Central assessment reduced $7,239; Michigan Air Line reduced $1,000.

Assessment of Railroads in Indiana—Continued.

Names of roads.	1890.		1891.		Increase over 1890.
	Total assessment.	Average per mile.	Total assessment.	Average per mile.	
Pittsburgh, Fort Wayne & Chicago	$5,738,200	$37,610	$10,903,070	$71,466	$5,164,370
Rantoul	33,298	4,050	90,536	11,014	57,238
State Line & Indiana City	42,215	12,567	94,324	27,775	52,114
Sturgis, Goshen & St. Louis	119,345	4,654	285,351	11,121	166,006
Terre Haute & Indianapolis	1,740,107	23,030	2,920,767	36,451	1,180,150
Terre Haute & Logansport	1,140,628	6,247	2,821,476	15,454	1,680,848
Toledo, St. Louis & Kansas City	1,182,210	6,906	2,638,480	15,411	1,456,270
Vernon, Greensburgh & Rushville	340,890	7,653	545,700	12,251	204,810
Wabash	2,919,445	17,587	4,658,505	24,063	1,739,060
White River (Kingan & Co.)	5,050		31,500		26,460
Totals	$69,762,676	$11,765.78	$160,809,575	$26,732.18	$90,557,954

463 *Recapitulation of Assessment of Railroads in Indiana.*

	1890.		1891.	
	Miles.	Value.	Miles.	Value.
Main track	5,929.28	$49,179,442	6,015.58	$127,149,232
Second main	107.95	1,044,730	159.37	2,901,180
Side track	1,394.56	3,180,506	1,490.96	6,646,355
Rolling stock	5,840.87	14,219,463	5,873.83	21,598,416
Improvement on right of way		2,138,535		2,514,392
Total valuation		$69,762,676		$160,809,595

464 *Railroad Assessment by Counties.*

Counties.	Assessment, 1890.	Assessment, 1891.	Increase.
Adams	$471,506	$1,281,550	$810,044
Allen	2,855,674	5,340,747	2,485,073
Bartholomew	564,316	1,830,397	1,266,081
Benton	624,423	1,731,651	1,107,228
Blackford	272,153	720,639	448,336
Boone	591,803	1,388,205	796,202
Carroll	575,842	1,211,034	636,192
Cass	1,287,077	2,794,826	1,507,749
Clark	1,016,873	2,439,062	1,422,189
Clay	689,232	1,436,537	747,305
Clinton	781,740	1,787,934	1,006,194
Crawford	194,201	463,137	296,936
Daviess	547,575	1,215,118	667,543
Dearborn	646,302	1,355,733	709 431
Decatur	589,115	1,256,962	667,847
De Kalb	1,277,950	2,700,375	1,422,425
Delaware	641,264	1,482,663	841.399
Dubois	300,124	698,973	398,849
Elkhart	1,252,820	2,163,716	910,896
Fayette	312,678	1,029,628	716,950
Floyd	298,882	954,411	655,529
Fountain	762,976	1,939,248	1,176,272
Franklin	169,278	353,979	184,701
Fulton	578,016	1,506,684	928,668
Gibson	700,094	1,503,403	803,309
Grant	683,133	1,514,181	831,048
Greene	376,119	1,230,675	855,556
Hamilton	395,571	843,324	447,753
Hancock	631,143	1,795,950	1,128,870
Harrison	167,476	390,639	223,163
Hendricks	942,804	2,227,648	1,284,844
Henry	961,876	2,658,783	1,696,007
Howard	480,883	1,087,658	606,775
Huntington	726,150	1,464,234	738,084
Jackson	788,925	1,825,582	1,036.657
Jasper	538,466	1,426,199	887,733
Jay	487,951	1,153,464	666,513
Jefferson	191,451	707,285	515,834
Jennings	637,742	1,745,212	1,107,470
Johnson	451,475	968,208	516,733
Knox	775,699	1,779,409	1,003,770
Kosciusko	1,529,717	3,013,932	1,484,215
Lagrange	261,755	469,385	207,630
Lake	4,055,800	8,053,209	3,997,409
La Porte	3,340,269	6,430,085	3,089,816
Lawrence	689,630	1,677,501	987,871
Madison	931,411	2,157,568	1,226,157
Marion	3,385,745	11,156,172	7,770,427
Marshall	1,772,628	3,700,932	1,928.304
Martin	298,172	666,418	368,246
Miami	893,593	1,867,065	973,472
Monroe	268,156	669,593	401,437
Montgomery	797,614	2,139,160	1,341,554
Morgan	262,440	719,725	457,285
Newton	614,329	1,786,601	1,172,272
Noble	1,254,346	2,462,651	1,208,305
465 Orange	$174,510	$384,693	$210,183
Owen	275,258	831,039	505,781
Parke	587,389	1,668,112	1,080,723

Railroad Assessment by Counties—Continued.

Counties.	Assessment, 1890.	Assessment, 1891.	Increase.
Perry	$63,613	$151,356	$87,743
Pike	173,007	446,708	273,701
Porter	2,829,171	5,425,312	2,596,141
Posey	727,001	1,486,170	759,169
Pulaski	492,045	1,246,521	754,476
Putnam	1,071,308	2,347,104	1,275,796
Randolph	910,609	2,365,534	1,454,925
Ripley	415,537	901,988	486,451
Rush	495,681	1,846,534	1,350,053
Scott	286,144	650,580	273,436
Shelby	603,424	1,846,418	1,242,993
Spencer	309,897	738,411	428,514
Starke	1,140,075	2,557,316	1,417,241
Steuben	185,254	369,045	210,791
St. Joseph	1,406,201	2,860,352	1,454,151
Sullivan	532,751	1,204,039	672,218
Tippecanoe	1,291,616	2,543,456	1,251,834
Tipton	456,552	976,666	520,114
Union	181,445	563,979	392,534
Vanderburg	972,951	2,042,940	1,069,989
Vermillion	463,885	1,225,556	761,761
Vigo	1,212,535	2,511,338	1,208,843
Wabash	855,307	1,632,442	777,135
Warren	467,049	1,042,947	575,898
Warrick	207,964	526,628	318,664
Washington	229,832	570,107	340,275
Wayne	907,821	2,334,323	1,426,502
Wells	422,820	1,143,206	720,386
White	724,541	1,801,242	1,086,701
Whitley	1,094,090	2,191,445	1,077,355
The State	$69,762,676	$160,809,575	$91,046,899

Railroads in Marion county.

Names of railroads.	Assessment, 1890.	Assessment, 1891.	Increase.
Belt railway	$530,880	$2,910,000	$2,379,120
Cin., Hamilton & Indianapolis	136,935	398,684	261,749
C., C., C. & St. L. (Chicago div.)	441,655	1,063,088	621,433
C., C., C. & St. L. (Indiana div.)	346,570	649,090	302,520
C., C., C. & St. L. (St. Louis div.)	128,675	305,983	177,308
Indiana, Decatur & Western	96,110	247,110	151,000
Indianapolis Union	579,000	3,064,000	2,485,000
Indianapolis & Vincennes	73,370	248,448	175,078
Lake Erie & Western	141,260	265,642	124,382
Louisville, New Albany & Chicago	84,425	209,472	125,047
Peoria & Eastern (West div.)	102,535	312,142	209,607
Peoria & Eastern (East div.)	100,175	227,474	127,299
Pitts., Cin., Chicago & St. L.	402,774	863,270	460,496
Terre Haute & Indianapolis	216,341	360,269	143,928
White River	5,040	31,500	26,460
Total	$3,385,745	$11,156,172	$7,770,427

466 *Valuation of Railroad Property in Indianapolis, the Towns and Townships of Marion County, for* 1890 *and* 1891.

City of Indianapolis.

Railroads.	Total assessment, 1890.	Total assessment, 1891.	Increase over 1890.
Belt	$73,780	$524,710	$450,930
Cleve., Cin., Chi. & St. L.:			
Indianapolis division	91,495	127,188	35,693
St. Louis division	63,165	2,125	103,960
Chicago division	107,710	272,710	
Cincinnati, Hamilton & Chicago	36,880	67,752	30,872
Indianapolis, Decatur & Western	10,660	29,242	18,582
Indianapolis Union	591,500	3,074,000	2,482,500
Indianapolis & Vincennes	6,680	17,295	10,615
Lake Erie & Western	50,385	83,959	33,574
Louisville, New Albany & Chicago	11,865	26,653	14,788
Peoria & Eastern, Eastern div. } Peoria & Eastern, Western div. }	61,135*	46,005 / 49,574	34,444
Pittsburg, Cin., Chi. & St. L.:			
Indianapolis division	54,875	106,258	51,383
Louisville division	38,247	73,980	35,733
Terre Haute & Indianapolis	53,821	66,521	12,700
White River	5,040	31,500	26,460
Totals	$1,257,238	$4,599,472	$3,342,234

*Not reported separately in 1890.

Town of West Indianapolis.

Belt	$121,300	$763,675	$642,375
Cleve., Cin., Chi. & St. L.:			
St. Louis division	22,940	65,662	42,722
Peoria & Eastern, Western div.	7,140	14,274	7,134
Indianapolis, Decatur & Western	4,140	12,558	8,418
Indianapolis & Vincennes	12,115	39,616	27,501
Terre Haute & Indianapolis	33,161	55,433	22,272
Totals	$200,796	$951,218	$750,422

Town of Brightwood.

Belt	$2,640	$54,900	$52,260
Cleve., Cin., Chi. & St. L.:			
Indianapolis division	144,016	203,628	59,612
Totals	$146,656	$258,528	$111,872

467 Town of Haughville.

Railroads.	Total assessment, 1890.	Total assessment, 1891.	Increase over 1890.
Indianapolis, Decatur & Western	$60,410	$107,480	$47,070
Peoria & Eastern, Western div.	22,100	39,645	17,545
Totals	$82,510	$147,125	$64,615

Town of Irvington.

Cin., Hamilton & Indianapolis	$13,830	$43,662	$29,832
Pitts., Cin., Chi. & St. L.: Indianapolis division	20,200	49,326	29,126
Totals	$34,030	$92,988	$58,958

Town of Mt. Jackson.

Cleve., Cin., Chi. & St. L.: St. Louis division		$36,146	$36,146

Town of Mt. Jackson not incorporated until 1890.

Center township.

Belt	$334,660	$1,569,215	$1,234,555
Cin., Hamilton & Indianapolis	27,215	83,611	56,396
Cleve., Cin., Chi. & St. L.: Chicago division	95,925	208,671	112,746
Lake Erie & Western	17,885	34,263	16,378
Louisville, New Albany & Chicago	15,066	37,572	22,506
Peoria & Eastern: Eastern division / Western division	8,415	2,905 / 37,083	31,573
Pitts., Cin., Chi. & St. L.: Indianapolis division	190,135	282,136	92,001
Louisville division	14,375	35,175	20,800
Totals	$703,676	$2,290,631	$1,586,955

Decatur township.

Indianapolis & Vincennes	$45,265	$153,242	$107,977

Franklin township.

Cleve., Cin., Chi. & St. L., Chi. div.	$120,945	$280,969	$160,024

468 Lawrence township.

Railroads.	Total assessment, 1890.	Total assessment, 1891.	Increase over 1890.
Cleve., Cin., Chi. & St. L.:			
Indianapolis division	$108,985	$250,066	$141,081
Lake Erie & Western	29,270	57,651	28,381
Totals	$138,255	$307,717	$169,462

Perry township.

Pitts., Cin., Chi. & St. L.:			
Louisville division	$87,072	$212,655	$125,583

Pike township.

Cleve., Cin., Chi. & St. L.:			
Chicago division	$89,115	$206,772	$117,657

Warren township.

Cin., Hamilton & Indianapolis	$64,010	$203,819	$139,809
Cleve., Cin., Chi. & St. L.:			
Chicago division	8,835	21,594	12,759
Indianapolis division	26,640	58,264	31,624
Peoria & Eastern, Eastern div.	61,320	182,064	120,744
Pitts., Cin., Chi. & St. L.:			
Indianapolis division	77,755	194,719	116,964
Totals	$238,560	$660,460	$421,900

Washington township.

Cleve., Cin., Chi. & St. L.:			
Chicago division	$20,300	$47,270	$26,970
Lake Erie & Western	47,020	92,034	45,014
Louisville, New Albany & Chicago	58,744	145,247	86,503
Totals	$126,064	$284,551	$158,487

Wayne township.

Cleve., Cin., Chi. & St. L.:			
Chicago division	$10,780	$25,102	$14,322
St. Louis division	99,515	202,080	102,565
Indianapolis, Decatur & Western	35,900	108,340	72,440
Indianapolis & Vincennes	12,485	40,080	27,595
Peoria & Eastern, Western div.	53,210	189,768	136,558
Terre Haute & Indianapolis	141,847	241,060	99,213
Totals	$353,737	$806,430	$452,693

469 To which offer in evidence and to the admission of which evidence the defendants object. The court sustains the objection, and the plaintiff now, at the time, excepts.

Printed Record of State Board of Tax Commissioners.

The court sustains the defendants' objection to the introduction of pages 81 to 218, inclusive, of the printed record of the proceedings of the State board of tax commissioners for the year 1891 (which said pages were offered in evidence on page — of this record); to which ruling of the court the plaintiff at the time excepts.

And the plaintiff now offers and proposes to prove that said pages last above referred to and said report, respectively, were and are as follows:

470 Filed Oct. 18, 1892.

JOHN R. WILSON, *Clerk.*

TABLE No. 1.

Value per mile of main track, second main and side tracks, rolling stock and improvements of right of way and in daily use for railroad purposes, as fixed by the State board of tax commissioners for the purpose of taxation for the year 1891.

Attica, Covington & Southern:

14.47	miles main track	per mile	$6,700
1.11	" side track	"	1,500
14.47	" rolling stock	"	2,900
Improvements on right of way			250

Baltimore & Ohio & Chicago:

146.35	miles main track	per mile	$26,100
11.23	" second main	"	8,000
34.02	" side track	"	3,500
146.35	" rolling stock	"	3,500
Improvements on right of way			69,025

Bedford & Bloomfield:

41.36	miles main track	per mile	$5,900
5.76	" side track	"	1,000
41.36	" rolling stock	"	1,000
Improvements on right of way			770

Belt railroad, Indianapolis:

9.95	miles main track	per mile	$150,000
9.39	" second main	"	150,000
5.96	" side track	"	100,000
9.55	" rolling stock	"	6,000
Improvements on right of way			4,400

Cairo, Vincennes & Chicago:

6.85	miles main track	per mile	$12,000
.08	" side track	"	3,000

Chicago & Erie:

159.76	miles main track	per mile	$29,600
54.87	" side track	"	5,000
159.76	" rolling stock	"	3,500
Improvements on right of way			48,725

471 Chicago & Calumet Terminal:

7.20	miles main track	per mile	$4,200
11.17	" side track	"	3,000
7.20	" rolling stock	"	1,200
Improvements on right of way			2,500

Chicago & Indiana Coal:

164.59	miles main track	per mile	$20,000
50.14	" side track	"	3,000
164.59	" rolling stock	"	6,000
Improvements on right of way			21,595

Chicago & Grand Trunk:

80.48	miles main track	per mile	$32,100
17.26	" side track	"	4,500
80.48	" rolling stock	"	4,500
Improvements on right of way			21,750

Chicago & West Michigan:

34.46	miles main track	per mile	$9,500
4.40	" side track	"	2,000
34.46	" rolling stock	"	2,000
Improvements on right of way			5,590

Cincinnati, Hamilton & Indianapolis:

78.26	miles main track	per mile	$31,200
16.40	" side track	"	5,000
78.26	" rolling stock	"	2,500
Improvements on right of way			21,020

Cincinnati, Lafayette & Chicago:

23.75	miles main track	per mile	$31,900
4.22	" side track	"	4,000
23.75	" rolling stock	"	4,500
Improvements on right of way		"	1,705

Cincinnati, Richmond & Ft. Wayne:

85.77	miles main track	per mile	$18,000
12.74	" side track	"	4,000
85.77	" rolling stock	"	3,000
Improvements on right of way		"	9,175

Cincinnati & Southern Ohio River:

3.69	miles main track	per mile	$4,750
1.11	" side track	"	2,000
3.69	" rolling stock	"	4,500
Improvements on right of way			500

472 Cincinnati, Wabash & Michigan:

168.57	miles main track	per mile	$7,700
29.72	" side track	"	3,000
168.57	" rolling stock	"	2,500
Improvements on right of way			14,775

Cleveland, Cincinnati, Chicago & St. Louis:

Indianapolis division.

83.84	miles main track	per mile	$27,900
2.44	" second main	"	8,000
39.05	" side track	"	4,000
83.84	" rolling stock	"	4,500
Improvements on right of way			105,920

St. Louis division.

80.47	miles main track	per mile	$28,700
31.08	" side track	"	4,000
80.47	" rolling stock	"	4,500
Improvements on right of way			18,755

Chicago division.

156.81	miles main track	per mile	$28,100
59.82	" side track	"	4,000
156.81	" rolling stock	"	4,500
Improvements on right of way			35,935

White Water division.

62.25	miles main track	per mile	$4,300
2.56	" side track	"	2,500
62.25	" rolling stock	"	4,500
Improvements on right of way			4,350

Lawrenceburgh branch.

2.91	miles main track	per mile	$5,000
3.71	" side track	"	2,000
2.91	" rolling stock	"	4,500
Improvements on right of way		"	1,510

Harrison branch.

.81	miles main track	per mile	$5,500
1.93	" side track	"	2,000
.81	" rolling stock	"	4,500

473 Columbus, Hope & Greensburgh:

24.28	miles main track	per mile	$11,400
4.24	" side track	"	2,000
24.28	" rolling stock	"	4,500
Improvements on right of way			955

Eel River:

98.92	miles main track	per mile	$13,100
20.82	" side track	"	3,000
98.92	" rolling stock	"	2,900
Improvements on right of way			22,605

Elgin, Joliet & Eastern:

21.20	miles main track	per mile	$19,600
4.43	" side track	"	3,500
21.20	" rolling stock	"	2,000
Improvements on right of way			3,505

Evansville belt:

4.45	miles main track	per mile	$13,000
3.60	" side track	"	6,000

Evansville & Indianapolis:

135.48	miles main track	per mile	$11,800
21.85	" side track	"	2,000
135.48	" rolling stock	"	500
Improvements on right of way			3,150

Evansville & Richmond:

101.40	miles main track	per mile	$10,100
5.40	" side track	"	3,000
Improvements on right of way			2,025

Evansville, Suburban & Newburgh:

10.90	miles main track	per mile	$9,900
.87	" side track	"	2,500
10.90	" rolling stock	"	4,000
Improvements on right of way			500

Evansville & Terre Haute:

160.74	miles main track	per mile	$16,400
40.54	" side track	"	3,500
160.74	" rolling stock	"	6,500
Improvements on right of way			48,100

474 Evansville, Terre Haute & Chicago:

43.17	miles main track	per mile	$18,000
21.14	" side track	"	3,500
43.17	" rolling stock	"	6,000
Improvements on right of way			9,240

Fairland, Franklin & Martinsville:

38.23	miles	main track	per mile	$6,400
5.41	"	side track	"	2,000
38.23	"	rolling stock	"	4,500
Improvements on right of way				890

Ft. Wayne, Cincinnati & Louisville:

128.63	miles	main track	per mile	$15,300
18.70	"	side track	"	3,000
128.63	"	rolling stock	"	1,600
Improvements on right of way				16,800

Ft. Wayne & Jackson:

53.29	miles	main track	per mile	$14,800
7.69	"	side track	"	3,000
53.29	"	rolling stock	"	5,500
Improvements on right of way				9,300

Grand Rapids & Indiana:

53.11	miles	main track	per mile	$15,600
5.43	"	side track	"	3,500
53.11	"	rolling stock	"	3,000
Improvements on right of way				9,475

Henderson Bridge Company:

9.46	miles	main track	per mile	$66,000
.65	"	side track	"	5,000
Improvements on right of way				50

Indiana Block Coal:

12.72	miles	main track	per mile	$5,700
2.68	"	side track	"	2,500
12.72	"	rolling stock	"	6,000
Improvements on right of way				200

Indiana, Illinois & Iowa:

49.24	miles	main track	per mile	$7,000
4.61	"	side track	"	2,000
49.24	"	rolling stock	"	1,000
Improvements on right of way				2,365

475 Indiana & Illinois Southern:

32.00	miles	main track	per mile	$9,900
1.00	"	side track	"	2,000
32.00	"	rolling stock	"	600
Improvements on right of way				50

Indianapolis, Decatur & Western:

76.26	miles	main track	per mile	$15,700
13.67	"	side track	"	4,000
76.26	"	rolling stock	"	2,500
Improvements on right of way			"	55,550

Indiana & Lake Michigan:

14.24	miles	main track	per mile	$8,000
1.77	"	side track	"	1,500
Improvements on right of way			"	30

Indianapolis Union:

.92	miles	main track	per mile	$1,500,000
.92	"	second main	"	600,000
3.16	"	side track	"	200,000
Improvements on right of way			"	500,000

Indianapolis & Vincennes:

116.92	miles	main track	per mile	$19,400
10.59	"	side track	"	2,500
116.92	"	rolling stock	"	1,300
Improvements on right of way				9,935

Island Coal Branch.

11.88	miles	main track	per mile	$11,700
6.83	"	side track	"	3,000
11.88	"	rolling stock	"	1,300

Gosport Branch.

4.31	miles	main track	per mile	$10,900
.13	"	side track	"	2,500
4.31	"	rolling stock	"	1,300

Joliet & Northern Indiana:

15.47	miles	main track	per mile	$12,100
2.67	"	side track	"	2,500
15.47	"	rolling stock	"	4,100
Improvements on right of way				2,320

476 Kentucky & Indiana Bridge Co.:

.35	miles	main track	per mile	$500,000
.12	"	second main	"	250,000
.35	"	rolling stock	"	3,000
Improvements on right of way				180

Lake Erie & Western:

317.14	miles	main track	per mile	$14,000
67.59	"	side track	"	3,000
317.14	"	rolling stock	"	2,700
Improvements on right of way				59,935

Lake Shore & Michigan Southern:

152.94	miles	main track	per mile	$40,500
73.42	"	second main	"	9,000
74.11	"	side track	"	4,000
152.94	"	rolling stock	"	5,500
Improvements on right of way				148,865

Louisville, Evansville & St. Louis:

209.58	miles main track	per mile	$15,100
28.73	" side track	"	3,500
209.58	" rolling stock	"	2,500
Improvements on right of way			25,755

Louisville & Nashville:

28.33	miles main track	per mile	$19,700
15.23	" side track	"	4,000
28.33	" rolling stock	"	2,000
Improvements on right of way		"	120,150

Louisville, New Albany & Chicago:

451.40	miles main track	per mile	$17,100
89.78	" side track	"	3,500
451.40	" rolling stock	"	3,100
Improvements on right of way		"	57,505

Louisville, New Albany & Corydon:

10.62	miles main track	per mile	$6,400
.10	" side	"	1,500
10.62	" rolling stock	"	1,200
Improvements on right of way			325

Louisville Bridge Co.:

.08	miles main track	per mile	$3,000,000

Louisville & Jeffersonville Bridge Co. (incomplete).

Total assessment	$80,635

477 Michigan Central:

42.41	miles main track	per mile	$18,000
42.41	" second main	"	10,000
35.50	" side track	"	3,500
42.41	" rolling stock	"	4,100
Improvements on right of way			29,140

Michigan Air Line:

6.06	miles main track	per mile	$7,900
1.58	" side track	"	2,500
6.06	" rolling stock	"	4,100
Improvements on right of way			2,560

Midland:

77.00	miles main track	per mile	$5,800
3.75	" side track	"	1,500
77.00	" rolling stock	"	800
Improvements on right of way			4,220

New Albany, Belt & Terminal:

2.50	miles main track	per mile	$80,000

New Albany Highland:

1.19	miles main track	per mile	$16,806

New York, Chicago & St. Louis:

151.02	miles main track	per mile	$28,900
34.30	" side track	"	4,500
151.02	" rolling stock	"	4,900
Improvements on right of way			36,500

Ohio Valley:

4.22	miles main track	per mile	$10,600
.12	" side track	"	2,000
4.22	" rolling stock	"	2,000

Ohio & Mississippi:

233.29	miles main track	per mile	$23,200
65.97	" side track	"	4,000
233.29	" rolling stock	"	3,000
Improvements on right of way			165,125

Orleans, West Baden & French Lick:

17.70	miles main track	per mile	$7,200
1.65	" side track	"	1,500
17.70	" rolling stock	"	3,100
Improvements on right of way			2,255

478 Peoria & Eastern (Western division):

78.59	miles main track	per mile	$27,000
24.59	" side track	"	3,500
78.59	" rolling stock	"	2,700
Improvements on right of way			14,750

Peoria & Eastern (Eastern division):

74.88	miles main track	per mile	$22,700
9.47	" side track	"	3,500
74.88	" rolling stock	"	2,700
Improvements on right of way			3,800

Peoria, Decatur & Evansville:

37.72	miles main track	per mile	$13,800
5.07	" side track	"	3,000
37.72	" rolling stock	"	3,000
Improvements on right of way			10,475

Peru & Detroit:

7.26	miles main track	per mile	$6,100
.14	" side track	"	2,000
7.26	" rolling stock	"	2,900

Pittsburg, Cincinnati, Chicago & St. Louis:

647.42	miles	main track	per mile	$28,500
4.23	"	second main	"	8,000
143.84	"	side track	"	4,500
647.42	"	rolling stock	"	5,000
Improvements on right of way				296,780

Pittsburg, Ft. Wayne & Chicago:

152.57	miles	main track	per mile	$57,500
15.21	"	second main	"	10,000
60.75	"	side track	"	5,000
152.57	"	rolling stock	"	9,500
Improvements on right of way				225,030

Rantoul:

8.22	miles	main track	per mile	$10,300
.50	"	side track	"	2,000
8.22	"	rolling stock	"	500
Improvements on right of way				760

State Line & Indiana City:

3.36	miles	main track	per mile	$17,400
.38	"	side track	"	3,000
3.36	"	rolling stock	"	9,500
Improvements on right of way				2,800

479 Sturgis, Goshen & St. Louis:

25.64	miles	main track	per mile	$10,400
1.73	"	side track	"	2,500
25.64	"	rolling stock	"	500
Improvements on right of way				1,550

Terre Haute & Indianapolis:

79.90	miles	main track	per mile	$21,800
97.83	"	side track	"	3,500
79.90	"	rolling stock	"	9,800
Improvements on right of way				53,012

Terre Haute & Logansport:

182.57	miles	main track	per mile	$12,700
35.22	"	side track	"	3,000
182.57	"	rolling stock	"	2,100
Improvements on right of way				13,780

Toledo, St. Louis & Kansas City:

171.20	miles	main track	per mile	$12,500
25.14	"	side track	"	3,500
171.20	"	rolling stock	"	2,200
Improvements on right of way				33,850

Vernon, Greensburg & Rushville:

44.54 miles main track	per mile		$7,500
4.94 " side track	"		2,000
44.54 " rolling stock	"		4,500
Improvements on right of way			1,340

Wabash:

166.00 miles main track	per mile		$22,700
71.06 " side track	"		4,000
166.00 " rolling stock	"		2,900
Improvements on right of way			124,665

White River (Kingan):

.46 miles main track	per mile		$25,000
.80 " side track	"		25,000

480 TABLE No. 2.

Description of Improvements on Right of Way and in Daily Use for Railroad Purposes—Valuation and Location of Same by Counties, Townships, and Stations.

Adams county.

Chicago & Erie:

St. Marys	Rivare	Passenger and freight house	$350	
Washington	Decatur	Transfer freight-house	300	
"	"	Tank and pump house	500	
"	"	Freight-house	300	
"	"	Passenger-house	400	
Preble	Magley	Station	100	
				$1,950

Cincinnati, Richmond & Ft. Wayne:

Washington	Decatur	Depot	$400	
"	"	One-third transfer-house	75	
"	N. of Decatur	Tank	800	
Monroe	Berne	Depot	300	
"	Monroe	Depot	350	
Wabash	N. of Ceylon	Water tank	400	
"	Ceylon	Depot	25	
"	Geneva	Depot	300	
				$2,650

Toledo, St. Louis & Kansas City:

Washington	Decatur	Depot	$300	
"	"	Tank	200	
				500
Total in Adams county				$5,100

Allen county.

Cincinnati, Richmond & Ft. Wayne:

Madison	Hoagland	Depot	$100	
				$100

481 Ft. Wayne & Jackson:

Ft. Wayne	Passenger-house	$2,500	
"	Passenger shed	100	
"	Baggage-room	200	
"	Round-house	350	
"	Freight-house	1,200	
"	Water tank	300	
			$4,650

Ft. Wayne, Cincinnati & Louisville:

Pleasant	Sheldon	Passenger and freight station.	$150		
Washington	Ft. Wayne	Machine shop and engine-house	5,000		
					$5,150

Grand Rapids & Indiana:

Perry	Huntertown	Depot and elevator	$1,500		
"	"	Water tank	500		
Washington	Wallen	Depot	200		
	Ft. Wayne	Coal dock	50		
					2,250

New York, Chicago & St. Louis:

Jackson		Station	$600		
Jefferson		Tool-house	20		
Adams	New Haven	Watch-house	10		
"	"	Tool-house	20		
"	"	Watch-house	10		
"	"	Car-repair house	20		
"	"	Station	300		
Wayne		Supply-house	75		
"		Watch-house	10		
"		Cattle pens	5		
"		Tool-houses (2)	40		
"	Ft. Wayne	Round-house	11,000		
"	"	Station and eating house	3,500		
"	"	Coal platform	2,000		
"	"	Office	140		
"	"	Freight-house	2,500		
"	"	Store-room	250		
"	"	Tool-house	20		
"	"	Watch-houses (5)	50		
"	"	Sand-house	20		
"	"	Oil-house	200		
"	"	Pump-house	40		
"	"	Water tank	700		
Aboite	Dunfree	Section-house	150		
"	"	Stock pens	10		
"	"	Tool-house	20		
"	"	Station	70		
					21,780

482 Pittsburg, Ft. Wayne & Chicago:

Monroeville	Monroeville	Passenger and freight house	1,600		
"	"	Pumping-house	300		
"	"	Frost-proof tub	300		
"	"	Hand-car house	150		
Jefferson	Maples	Passenger and freight house	500		
Adams	Adams	Telegraph office	50		
"	"	Section-house	225		
"	"	Hand-car house	150		
Adams	E. yd., Ft. Wayne	Car-repair house	350		
"	" "	Car round-house	23,500		
"	" "	Boiler-house	250		
"	" "	Lumber shed	500		
"	" "	Frost-proof tub	500		
City Ft. Wayne	Ft. Wayne	M. W. carpenter shop	300		
"	"	Dispatcher's office	700		
"	"	Four frost-proof tubs	2,000		
"	"	Half transfer-house	1,000		
"	"	Gate tower	225		
"	"	Store-room	250		
"	"	Car shop, main	} 25,000		
"	"	" two wings			
"	"	Sand-house	300		
"	"	Office	100		

Pittsburgh, Ft. Wayne & Chicago—Continued:

City Ft. Wayne	Ft. Wayne	Blacksmith shop		$20,000
"	"	Engine-room		1,000
"	"	Boiler and tin shop		12,000
"	"	Round-house		25,000
"	"	Oil-house		675
"	"	Machine shop		25,000
"	"	Engine-house		800
"	"	Casting and storage shed		50
"	"	Storehouse		1,700
"	"	Freight-house		11,000
"	"	Superintendent's office		5,000
"	"	Station and eating house		8,000
"	"	Privy		300
"	"	Car inspector's building		300
"	"	Two hand-car houses		300
"	"	M. of W. tool-house		100
Wayne	St. Mary's river	Pump-house		7,500
"	"	Boiler-house		
"	"	Stand pipe		
"	"	Coal bin		150
"	G. R. & I. Jct.	Coal bin		25
"	"	Telegraph office		25
Lake	Arcola	Tank-house		650
"	"	Pump-house		325
"	"	Passenger and freight house		500
"	West of Arcola	Section-house		250
				$178,900

483 Wabash:

Wayne	Ft. Wayne	Engine-house	$6,000
"	"	Machine shop	4,500
"	"	Engine-room	700
"	"	Blacksmith shop	2,800
"	"	Boiler shop	800
"	"	Boiler shop	400
"	"	Closet	25
"	"	Iron shed	250
"	"	Oil-house	250
"	"	Scrap-iron house	25
"	"	Tank	600
"	"	Engine-house	8,500
"	"	M. M. office	200
"	"	M. M. office addition	150
"	"	Watch-house	20
"	"	Hand-car house	20
"	"	Car-oilers' house	100
"	"	Coal bins	25
"	"	Dry-house	350
"	"	Pattern shop	350
"	"	Ice-house	75
"	"	Barn	75
"	"	Carpenter shop	900
"	"	Store-room	200
"	"	Car-oilers' house	200
"	"	Freight-house	3,000
"	"	Station	1,500
"	"	Express and baggage house	300
"	"	Closet	40
"	"	Watch-house	20
"	"	One-half transfer-house	1,200
"	"	Watch-house	20
"	"	Pumpers' house	150
"	"	Pumpers' house	150
"	"	Power-house	350
"	"	Coal-house	20

Wabash—Continued:

Wayne	Ft. Wayne	Yardmaster's office	$25	
"	Muncie Jct.	Watch-house	20	
Maumee	Woodburn	Station	400	
"	"	Hand-car house	20	
Milan	Gar Creek	Hand-car house	20	
Adams	New Haven	Station	400	
"	"	Oil inspector's house	20	
"	"	Hand-car house	20	
"	"	Watch-house	20	
Aboit	Aboit	Station	100	
"	"	Section-house	100	
"	"	Hand-car house	20	
				$35,430
Total in Allen county				$248,260

484 Bartholomew county.

Columbus, Hope & Greensburg:

Haw Creek	Hartsville	Depot	$150	
"	Hope	Depot	200	
"	"	Tool-house	10	
"	"	Water station	100	
Columbus	Columbus	Passenger depot	250	
"	"	Freight depot	25	
"	"	Tool-house	10	
				$745

Pittsburg, Cincinnati, Chicago & St. Louis:

Wayne	Jonesville	Station	$400	
Columbus	Columbus	Passenger-house	2,000	
"	"	Freight-house	4,000	
"	"	Carpenter shop	300	
"	"	Supervisor's office	100	
"	"	Two tool-houses	60	
"	"	Water tank	800	
"	"	Car inspector's house	200	
"	"	Telegraph supply-house	100	
"	"	Five watch-houses	100	
"	"	Yardmaster's office	50	
German	Taylorsville	Station	300	
				8,410
Total in Bartholomew county				$9,155

Benton county.

Chicago & Indiana Coal:

Union	Wadena	Station	$500	
"	"	Tool-house	10	
"	Lochiel	Tank and pump	500	
"	"	Station	500	
"	"	Tool-house	10	
Center	E. Fowler	Station	300	
"	Swanington	Station	150	
"	"	Tool-house	10	
Oak Grove	Oxford	Station	250	
"	"	Tank and pump	300	
"	"	Tool-house	10	
				$2,540

485 Cincinnati, Lafayette & Chicago:

Bolivar	Easton	Depot	$500	
"	"	Tool-house	10	
Oak Grove	Atkinson	Depot	75	

Cincinnati, Lafayette & Chicago—Continued:

Center	Fowler	Depot	$400	
"	"	Tool-house	10	
Richland	Earl Park	Tool-house	10	
"	"	Depot	300	
"	"	Water station	200	
"	"	Coal bins	100	
York	Raub	Depot	100	
				$1,705

Lake Erie & Western:

Bolivar	Otterbein	Pass. and freight house	$400	
"	Templeton	Pass. and freight house	500	
"	"	Water tank	100	
Oak Grove	Oxford	Coal shed	10	
"	"	Pass. and freight station	400	
Grant	Chase	Pass. and freight station	150	
"	"	Water tank	250	
"	Boswell	Pass. and freight station	150	
Hickory Grove	Talbott	Pass. and freight station	150	
"	Ambia	Pass. and freight station	200	
				2,310
Total in Benton county				$6,555

Blackford county.

Fort Wayne, Cincinnati & Louisville:

Licking	Hartford City	Pass. and freight station	$1,000	
"	"	Water tank	200	
Harrison	Montpelier	Water tank	200	
"	"	Pass. and freight station	1,100	
				$2,500

Pittsburg, Cincinnati, Chicago & St. Louis:

Jackson	Mill Grove	Station	$45	
"	"	Coal-house	15	
Licking	W. of Hartford City	Water tank	350	
"	"	Pump-house	50	
"	"	Coal-house	20	
"	Hartford City	Station	400	
"	"	Tool-house	45	
"	"	Tool-house	45	
				970
Total in Blackford county				$3,470

486 Boone county.

Cleveland, Cincinnati, Chicago & St. Louis—Chicago div.

Center	W. of Lebanon	Water station	$100	
"	Lebanon	Depot	800	
"	"	Tool-house	20	
Eagle	Zionsville	Depot	250	
"	"	Water station	300	
"	"	Tool-house	10	
Worth	Whitestown	Tool-house	10	
"	"	Depot	250	
Jefferson	Thorntown	Depot	400	
"	"	Water station	300	
"	"	Tool-house	10	
				$2,450

Peoria & Eastern:

Jackson	Jamestown	Depot	$500	
				500

Louisville, New Albany & Chicago:

Marion	Terhune	Depot	$300		
					$300

Midland:

Rosher		Tool-house	$10	
Gadesden		Depot	250	
"		Tool-house	10	
Lebanon		Depot	400	
"		Tool-house	10	
"		Tank	100	
"		Shop	1,000	
Advance		Depot	300	
"		Tool-house	10	
				2,090
Total in Boone county				$5,340

Brown county.

No improvements.

487 Carroll county.

Louisville, New Albany & Chicago:

Clay	Owasco	Pump-house	$50	
"	"	Tank	200	
"	"	Watch-house	200	
"	"	Depot	400	
Madison	Ockley	Depot	400	
"	Radnor	Depot	300	
"	"	Tool-house	15	
Deer Creek	Delphi	Watch-house	100	
"	"	Depot	400	
"	"	Three tool-houses	45	
Tippecanoe	Pittsburg	Watch-house	15	
Jefferson	Lennox	Depot	150	
"	Tioga	Pump-house	50	
"	"	Tank	300	
				$2,625

Terre Haute & Logansport:

Democrat	Cutler	Depot	$200	
"	"	Tool-house	10	
Monroe	Bringhurst	Depot	25	
"	Flora	Depot	25	
"	"	Water tank	200	
"	"	Pump-house	15	
"	"	Tool-house	10	
Jackson	Camden	Depot	275	
"	"	Tool-house	10	
				770

Wabash:

Rock Creek	Burrows	Station	400	
"	Rockfield	Station	400	
"	"	Hand-car house	20	
Deer Creek	Delphi	Station	1,200	
"	"	Coal-house	20	
"	"	Closet	20	
"	"	Freight-house	400	
"	"	Freight office	40	
"	"	Hand-car house	20	
				2,520
Total in Carroll county				$5,915

488 Cass county.

Eel River:

Eel	Logansport	Station	$300		
"	"	Engine-house	600		
"	"	Hand-car house	10		
"	"	Scale-house	10		
"	"	Repair-house	100		
"	"	Oil-house	20		
"	"	Telegraph office	50		
"	"	Tank	300		
"	"	Coal-house	20		
Clay	Adamsboro	Station	200		
"	"	Hand-car house	10		
					$1,620

Pittsburgh, Cincinnati, Chicago & St. Louis:

Eel	Logansport	Three tool-houses	$140		
"	"	Engine-house	12,000		
"	"	Oil-house	1,500		
"	"	Tallow-house	20		
"	"	Sand-house	10		
"	"	Eight coal bins	115		
"	"	Five watch-houses	150		
"	"	Water tank	100		
"	"	Natural-gas house	80		
"	"	Storehouse	25		
"	"	Foreman's office	700		
"	"	Casting shed	30		
"	"	Boiler store-room	60		
"	"	Iron shed	25		
"	"	Boiler shops	4,000		
"	"	Machine shops	7,500		
"	"	Engine-room	50		
"	"	Steel rack	10		
"	"	Smith shop	3,000		
"	"	Charcoal-house	15		
"	"	Car shop	3,000		
"	"	Car shop	3,000		
"	"	Engine-room	500		
"	"	Car-repair house	60		
"	"	Oil-room	20		
"	"	Tower-house	435		
"	"	Carpenter-house	30		
"	"	Scrap bins	20		
"	"	Store-room	60		
"	"	Yardmaster's office	400		
"	"	Ice-house	800		
Eel	"	Ice-house	95		
489 "	"	Car inspector's room	55		
"	"	Freight-house	5,500		
Eel	"	Master carpenter's office	150		
"	"	Passenger-house	15,000		
"	"	Telegraph office	50		
Noble	Gebhardt	Station	40		
"	"	Tool-house	40		
Boone	Royal Center	Station	500		
"	"	Tool-house	20		
"	"	Coal-house	25		
"	"	Pump-house	35		
"	"	Water tank	450		
Jefferson	Lake Cicott	Station	20		
"	"	Water tank	90		
"	"	Pump-house	50		
"	"	Coal-house	20		
"	"	Ice-house	2,500		
Washington	Anoka	Tool-house	45		

Pittsburgh, Cincinnati, Chicago & St. Louis—Continued:

Washington	Anoka	Water tank	$450	
"	"	Pump house	55	
"	"	Coal-house	15	
"	"	Station	100	
Tipton	Onward	Station	50	
"	"	Coal-house	5	
"	"	Tool-house	50	
"	Walton	Station	400	
Jackson	Galveston	Station	400	
"	"	Coal	10	
				$64,075

Terre Haute & Logansport:

Clinton	Clymers	Tool-house and depot	$160	
Eel	Logansport	Depot	1,000	
"	"	Freight-house	500	
"	"	Round-house	3,000	
"	"	Water tank	500	
	"	Watch-house	10	
"	"	Watch-house	10	
"	"	Carpenter shop	100	
"	"	Dwelling	115	
"	"	Tool-house	10	
"	"	Tool-house	10	
		Car-repair house	35	
				5,450

490 Wabash:

Miami	Waverly	Station	$500	
"	"	Hand-car house	20	
"	"	Coal-house	200	
"	"	Derrick	50	
"	"	Watch-house	20	
"	Cass	Station	75	
Eel	Logansport	Station	1,500	
"	"	Baggage-room	75	
"	"	Freight-house	1,000	
"	"	Two hand-car houses	40	
"	"	Car-repairer's house	25	
"	"	Yard offices	25	
Clinton	Clymers	Station	300	
"	"	Hand-car house	20	
"	"	Tank	600	
"	"	Power-house	150	
"	"	Coal-house	20	
				4,620
Total in Cass county				$75,765

Clark county.

Louisville, New Albany & Chicago:

Carr	Bennettsville	Tool-house	$15	
"	Bridgeport	Tank	300	
	"	Pump-house	50	
Wood	Borden	Depot	100	
"	"	Tool-house	15	
"	"	Two residences	200	
"	Dows	Tank	25	
Jeffersonville	Ohio Falls	Car-repairer's house	40	
				$745

Ohio & Mississippi:

Oregon	Marysville	Section-house	$35	
Charlestown	"	Section-house	35	
"	Charlestown	Depot	500	

Ohio & Mississippi—Continued:

Charlestown	Charlestown	Section-house	$35	
"	"	Pump and tank	650	
Utica	Watson	Depot	500	
"	"	Section-house	35	
Jeffersonville	Jeffers'ville	Freight depot	600	
"	"	Round-house	600	
"	"	Dwelling-house	100	
				$3,090

491 Pittsburgh, Cincinnati, Chicago & St. Louis:

Jeffersonville	Jeffersonv'le Jct.	Signal tower	$500	
"	Ohio Falls	Signal tower	400	
"	Jeffersonville	Passenger-house	1,200	
"	"	Signal tower	400	
"	"	Freight-house	2,500	
"	"	Repair shed	75	
"	"	Oil-house	50	
"	"	Three watch-houses	60	
"	"	Water tank	600	
Silver Creek	Sellersburg	Station	200	
"	"	Tool-house	100	
"	Speeds	Water tank and pump-house	500	
Monroe	Henryville	Station	150	
"	"	Tool-house	10	
				6,745
Total in Clark county				$10,580

Clay county.

Chicago & Indiana Coal:

Brazil	Brazil	Passenger station	$500	
"	"	Freight-house	800	
"	"	Storehouse	300	
"	"	Machine shop	500	
"	"	Office	25	
"	"	Sand-house	10	
"	"	Oil-house	100	
"	"	Coal chute	600	
"	"	Engine-house	4,000	
"	"	Tank and pump	600	
"	"	Tool-houses (2)	20	
"	"	Car-account office	100	
"	"	Car shop	400	
"	"	Shed at bridge	20	
				$7,975

Cleveland, Cincinnati, Chicago & St. Louis:

Van Buren	Carbon	Depot	$600	
"	"	Hand-car house	30	
"	"	Section-house	480	
"	"	Water station	250	
Dick Johnson	Lodi	Section-house	120	
"	"	Hand-car house	30	
				1,510

492 Evansville & Indianapolis:

Harrison	Clay City	Freight and passenger house	$100	
Sugar Ridge	N'r Saline City	Water station	75	
				$175

Indiana Block Coal:

Brazil	Brazil	Old dwelling	$100	
				100

Terre Haute & Indianapolis:

Van Buren	Harmony	Depot	$400		
"	"	Freight-house	300		
"	"	Section-house	200		
"	"	Hand-car house	15		
"	Knightsville	Depot	500		
"	"	Coal-house	25		
Brazil	Brazil	Depot	800		
"	"	Baggage-room	75		
"	"	Freight-house	300		
"	"	Car and coal house	100		
"	"	Water tank	300		
"	"	Engine-house	250		
"	"	Three watch-houses	15		
Posey	Staunton	Depot	75		
"	"	Hand-car house	10		
"	Cloverdale	Passenger shed	15		
Sugar Ridge	Ashborough	Depot	75		
"	"	Hand-car house	10		
					$3,465
Total in Clay county					$13,225

Clinton county.

Cleveland, Cincinnati, Chicago & St. Louis:

Perry	Colfax	One-half depot	$250		
"	"	Coal bin	100		
"	"	Tool-house	10		
					$360

Lake Erie & Western:

Johnson	Circleville	Passenger and freight station	$200		
"	Hillisburg	Passenger and freight station	150		
"	"	Water tank	100		
Michigan	Boyleston	Passenger and freight station	150		
Center	Frankfort	Passenger and freight station	300		
Madison	Mulberry	Passenger and freight station	150		
"	"	Water tank	200		
					1,250

493 Louisville, New Albany & Chicago:

Kirklin	Sugar Creek	Tank	$100		
"	"	Pump-house	50		
"	Kirklin	Depot	200		
"	"	Two tool-houses	30		
Center	Frankfort	Two tool-houses	30		
"	"	Freight-house	750		
"	"	Car repairers' house	15		
"	"	Passenger-depot	300		
Ross	Rossville	Depot	200		
"	"	Two tool-houses	30		
Owen	Cambria	Depot	200		
					1,905

Terre Haute & Logansport:

Center	Frankfort	Depot	$400		
"	"	Freight-house	25		
"	"	Watch-house	5		
"	"	Tool-house	10		
"	"	Water tank	100		
"	"	Pump-house	15		
"	"	Coal-house	10		
Owen	Moran	Depot	50		
"	"	Tool-house	10		
"	Sedalia	Depot	25		
Perry	Colfax	Tool-house	10		
"	"	Half depot	150		
					810

Toledo, St. Louis & Kansas City:

Warren	Forest		Depot	$125	
"	"		Tank	100	
Michigan	Michigantown		Depot	125	
Center	Frankfort		Tank	150	
"	"		Freight-house	25	
Washington	Jefferson		Depot	150	
Center	Frankfort		Tool-house	25	
"	"		Ice-house	600	
"	"		Engine-house	12,500	
"	"		Car shop	7,250	
"	"		Machine shop	7,250	
					$28,300
Total in Clinton county					$32,625

494 Crawford county.

Louisville, Evansville & St. Louis:

Whisky Run	Milltown		Pass. and freight depot	$400	
"	"		Water tank	200	
Liberty	Marengo		Pass. and freight depot	400	
"	"		Hand-car house	10	
Sterling	Temple		Pass. and freight depot	150	
"	English		Pass. and freight depot	500	
Patoka	Taswell		Pass. and freight depot	175	
"	"		Watch-house	75	
Johnson	Boston		Pass. and freight depot	200	
"	"		Water tank	150	
Patoka	Riceville		Pass. and freight depot	100	
					$2,460
Total in Crawford county					$2,460

Daviess county.

Evansville & Indianapolis:

Veale	Jacobs		Water station	$50	
Washington	Washington		Freight and pass. house	100	
"	Prairie Creek		Water station	50	
Steele	Plainville		Freight and pass. house	50	
Elmore	Elnora		Freight and pass. house	50	
					$300

Evansville & Richmond:

Elmore	Elnora		Water station	$100	
Madison	Odon		Freight and pass. station	125	
					225

Ohio & Mississippi:

Barr	Clarks		Section-house	$65	
"	Montgomery		Depot	135	
Washington	Washington		Depot	200	
"	"		Carp. repair shop	75	
"	"		Paper-house	40	
"	"	Shops	Telegraph office, coal bins, sand-house, oil-house, round-house, blacksmith shop, brass and tin shop, office and store room, machine shop, power-room, mill-room, car shop, paint shop, dry-house, bolt-house, paint-supply house, transfer-table, turn-table, iron rack, *iron rack*, coal-houses, two lumber sheds, two heater-pipe houses, pump-house	125,000	
					125,515
Total in Daviess county					$126,040

495 Dearborn county.

Cleveland, Cincinnati, Chicago & St. Louis—Chi. div.:

Lawrenceb'g	L'renceb'g Jc.	Depot	$400		
"	"	Water station	350		
York	Guilford	Water station	500		
"	"	Depot	200		
"	"	Engine shed	50		
"	"	Tool-house	10		
"	Manchester	Tool-house	10		
Jackson	Weisburg	Tool-house	10		
					$1,530

White Water division:

Harrison	Harrison	Water tank	$450		
					450

Lawrenceburg branch:

Lawrenceb'g	Lawrenceb'g	Passenger depot	$1,000		
"	"	Freight depot	500		
"	"	Tool-house	10		
					1,510

Cincinnati & Southern Ohio:

Center	Aurora	Depot	$500		
					500

Ohio & Mississippi:

Lawrenceb'g	Lawrenceb'g	Depot	$250		
"	"	Repair shop	10		
Center	Aurora	Depot	200		
"	"	Telegraph office	200		
"	Cochran	Old machine shop			
"	"	Shop and engine-house			
"	"	Pattern shop		4,500	
"	"	Pump-house			
"	"	Telegraph office			
"	"	Tank			
Sparta	Dillsboro	Depot	35		
"	Cold Springs	Depot	15		
					5,210
Total in Dearborn county					$9,200

496 Decatur county.

Cleveland, Cincinnati, Chicago & St. Louis—Chi. div.:

Washington	Greensburg	Passenger depot	$800		
"	"	Freight depot	800		
"	"	Engine-house and tool-house	2,000		
"	"	Water station	200		
"	"	Stock pens	75		
"	"	Three tool-houses	30		
Salt Creek	New Point	Depot	200		
"	"	Tool-house	10		
"	Dales	Water station	150		
					$4,265

Columbus, Hope & Greensburg:

Clay	Ewington	Depot	$100		
"	"	Tool-house	10		
"	Burneys	Depot	100		
					210

Evansville & Richmond:

Jackson	Sardinia	Water tank	$100		
					100

Vernon, Greensburg & Rushville:

Sand Creek	Westport	Depot	$100		
"	"	Tool-house	10		
"	Lett's Corner	Tool-house	10		
Clay	Horace	Depot	100		
					$220
Total in Decatur county					$4,795

De Kalb county.

Baltimore & Ohio & Chicago:

Concord	St. Joe	Passenger depot	$250		
"	"	Water station	800		
"	"	Grain elevator	1,200		
"	"	Two hand-car houses	20		
"	"	Stock pens	10		
Jackson	Auburn Junc.	Express office	100		
"	"	One-third passenger depot	200		
"	"	Two hand-car houses	20		
"	"	Stock pens	10		
Union	"	Freight-house	1,200		
497 Keyser	Garrett	Round-house	20,000		
"	"	Machine shop and power-house	8,000		
Keyser	"	Blacksmith shop	4,000		
"	"	Car-repair shops	5,000		
"	"	Passenger depot	4,000		
"	"	Sand-house	700		
"	"	Oil-house	600		
"	"	Coal chutes	600		
"	"	Two water tanks	600		
"	"	Freight shed	30		
"	"	Two hand-car houses	20		
"	"	Other structures	100		
					$47,460

Eel river:

Wilmington	Butler	Station	$600		
"	"	Closet	10		
"	"	Engine-house	2,500		
"	"	Power-house	400		
"	"	Coal-house	50		
"	"	Hand-car house	20		
"	"	Hand-car house	15		
"	"	Tank	500		
"	"	Coal-house	20		
"	"	Lamp-house	20		
"	"	M. W. office	150		
"	"	Oil-house	75		
"	"	Car shops	2,000		
"	"	Car-repair shop	20		
"	"	Car-repair shop	20		
"	"	Coal chute	200		
"	"	Coal bins	75		
"	"	Yardmaster's office	100		
"	"	Ice-house	100		
"	"	Turn-table	100		
"	"	Tool-house	20		
"	"	Office	40		
"	"	Brass foundry	150		
"	"	Storehouse	200		
"	"	Sand-house	75		
"	"	Lumber sheds	75		
Butler	Cedar Creek	Station	200		
Jackson	Auburn Jc.	One-third station	100		

Eel river—Continued:

Jackson	Auburn	Jc.	One-half transfer shed	$50	
"	"	"	One-half transfer shed	20	
"	"	"	Hand-car house	20	
Union	Auburn		Station	200	
"	"		Elevator	800	
Union	"		Engine-room	50	
498 "	"		Tank	200	
"	"		Office	20	
Union	"		Hand-car house	20	
"	"		Coal-house	20	
"	"		Scale-house	20	
					$9,255

Ft. Wayne & Jackson:

Smithfield	Summit		Passenger-house	$300	
"	Waterloo		Freight-house	700	
"	"		Workshop		
"	"		Workshop		
"	Auburn		Freight-house	600	
"	"		Horse-power house		
Union	Auburn	Jct.	Water tank	250	
"	"		Windmill		
Butler	St. Johns		Hand-car house	25	
"	New Era		Freight-house	300	
"	"		Horse-power house	75	
					2,250

Lake Shore & Michigan Southern:

Richland	Corunna		Passenger-house	$500	
"	"		Freight-house		
"	"		Hand-car house		
Union	Waterloo		Passenger-house	2,500	
"	"		Freight-house		
"	"		Dwelling-house		
"	"		Dwelling kitchen		
"	"		Hand-car house		
"	"		Hand-car house		
"	"		Interlocking tower		
"	"		Water tank		
"	"		Pump-house		
Wilmington	Butler		Passenger-house	10,000	
"	"		Water-closet		
"	"		Freight and grain house		
"	"		Pump-house		
"	"		Round-house		
"	"		Interlocking tower		
"	"		Coal chute		
"	"		Freight office		
"	"		Water tank		
"	"		Water tank		
"	"		Hand-car house		
"	"		Car-repairer's house		
"	"		Telegraph house		
					13,000
Total in De Kalb county					$71,965

499 Delaware county.

Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division:

Liberty	Selma		Pass. and freight house	$450	
Center	Muncie		Passenger-house	6,000	
"	"		Water station	600	
"	"		Tool sheds (2)	60	
"	"		Freight-house (part)	300	

Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division—Cont'd:

Center	Muncie		Engine-house	$100	
"	"		Baggage-room	75	
"	"		Watch-house	20	
Mt. Pleasant	Yorktown		Pass. and freight house	250	
"	"		Hand-car house	30	
"	"		Section-house	100	
Selma	Daleville		Pass. and freight house	60	
"	"		Hand-car house	30	
					$8,075

Ft. Wayne, Cincinnati & Louisville:

Center	Muncie		Freight-house	$600	
"	"		Store house	50	
"	"		Water tank	400	
Hamilton	Shidelers		Pass. and freight station	500	
Union	Eaton		Pass. and freight station	500	
					2,050

Lake Erie & Western:

Delaware	Albany		Pass. and freight station	$200	
"	"		Water tank	400	
"	De Soto		Pass. and freight station	200	
Center	Muncie		Sand-house	20	
"	"		Water tank	200	
"	"		Round-house	1,000	
"	"		Office building	300	
"	"		Freight-house	700	
"	"		Pass. house and arcade	800	
					3,820
Total in Delaware county					$13,945

Dubois county.

Louisville, Evansville & St. Louis:

Jefferson	Bird's Eye		Pass. and freight station	$300	
"	"		Hand-car house	10	
"	Mentor		Pass. and freight house	220	
Jackson	Kyana		Pass. and freight house	220	
"	St. Anthony		Pass. and freight house	300	
Patoka	Huntingburg		Pump-house	50	
"	Outside corporation		Oil-house	150	
"	"		Store-room	150	
"	"		Blacksmith shop	300	
"	"		Machine shop	5,000	
"	"		Master mechanic's office	200	
"	"		One-half engine-house	500	
"	"		Tin shop and foundry	150	
"	Inside corporation		One-half engine-house	500	
"	"		Paint shop	300	
"	"		Store-room	50	
"	"		Paint store	25	
"	"		Pass. and freight house	1,500	
"	"		Water tank	150	
Bainbridge	Jasper		Pass. and freight house	250	
"	"		Engine-house	40	
"	"		Water tank	20	
Patoka	Huntingburgh		Carpenter shop	100	
Cass	Ferdinand		Pass. and freight house	100	
					$10,585
Total in Dubois county					$10,585

Elkhart county.

Baltimore & Ohio & Chicago:

Union	Napanee	Grain elevator	$1,000	
"	"	Stock pens	10	
Locke		Passenger depot	250	
"		Hand-car house	10	
				$1,270

Cincinnati, Wabash & Michigan:

Cleveland	Belleview	Station building	$50	
Concord	Elkhart	Station building	500	
"	"	Station building	450	
"	"	Water tank	200	
"	"	Round house	300	
Elkhart	Goshen	Station building	500	
"	"	Station building	400	
"	"	Water tank	200	
Jackson	New Paris	Station building	150	
				2,750

501 Lake Shore & Michigan Southern:

Concord	Elkhart	Passenger and eating house		
"	"	Dining-room		
"	"	Kitchen		
"	"	Laundry		
"	"	Barn		
"	"	Ice-house		
"	"	Water-closet		
"	"	Yardmaster's office		
"	"	Freight-house		
"	"	Flour-house		
"	"	Car inspector's rooms		
"	"	Telegraph-supply house		
"	"	Battery-room		
"	"	Brakeman's room		
"	"	Ice-house		
"	"	Bunk-room		
"	"	Round-house A		
"	"	Round-house B		
"	"	Round-house tool-room		
"	"	Round-house shop		
"	"	Round-house oil-room		
"	"	Round-house sand-house		
"	"	Round-house water-closet		
"	"	Two paint shops		
"	"	Rail shop		
"	"	Blacksmith shop		
"	"	Two boiler-rooms		
"	"	Coal-house		
"	"	Rail-shop office		
"	"	Rail-shop store-room		
"	"	Foundry		
"	"	Two foundry cupolas		
"	"	Foundry case-room		$90,000
"	"	Foundry office		
"	"	Foundry sand-house		
"	"	Foundry cleaning-room		
"	"	Pattern-room		
"	"	Machine shop		
"	"	Carpenter shop		
"	"	Engine-room		
"	"	Brass foundry		
"	"	Boiler shop		
"	"	Blacksmith shop		
"	"	Two flue-rooms		
"	"	Three store-rooms		

Lake Shore & Michigan Southern—Continued:

Concord	Elkhart		Scrap-rooms		
"	"		Two lumber sheds		
"	"		Upholsterer's room		
"	"		Master carpenter's shop		
Concord	"		Master carpenter's shop		
502 "	"		Master carpenter's shop		
"	"		Master carpenter's tin shop		
Concord	"		Master carpenter's tin shop		
"	"		Master carpenter's store-room		
"	"		Master carpenter's office		
"	"		Master carpenter's lumb'r shed		
"	"		Master carpenter's cast'g-room		
"	"		Master carpenter's lime-house		
"	"		Three hand-car houses		
"	"		Pump-house		
"	"		Dwelling-house		
"	"		Coal chute		
"	"		Water tank A		
"	"		Water tank B		
"	"		Water tank C		
"	"		Master carpenter's oil-house		
"	Goshen		Passenger-house		
"	"		Water-closet		
"	"		Grain-house		
"	"		Freight-house	$3,700	
"	"		Flour-house		
"	"		Hand-car house		
"	"		Car inspector's shop		
"	"		Water tank		
Clinton	Millersburg		Passenger-house		
"	"		Water-closet		
"	"		Grain-house	1,100	
"	"		Water tank		
"	"		Windmill		
"	"		Hand-car house		
Concord	Dunlap		Passenger-house	100	
Washington	Bristol		Passenger-house		
"	"		Baggage-room		
"	"		Freight-house	850	
"	"		Hand-car house		
York	Vistula		Passenger and freight house	500	
					$96,250

Sturgis, Goshen & Elkhart:

	Goshen	Engine-house	$250	
	Middlebury	Passenger-house	450	
				700
Total in Elkhart county				$100,970

503 Fayette county.

Cincinnati, Hamilton & Indianapolis:

Connersville	Connersville	Passenger depot	$500	
"	"	Freight depot	800	
"	"	Sand-house	50	
"	"	Carpenter shop	100	
"	"	Engine-house	300	
"	"	Water tank	200	
Jennings		Pump-house	500	
Connersville	Big William Cr'k	Watch-house	75	
				$2,525

Ft. Wayne, Cincinnati & Louisville:

Connersville	Connersville	One-half passenger-house	$300	
"	"	Round-house	500	
				800

Pittsburgh, Cincinnati, Chicago & St. Louis:

Fairview	Falmouth	Station		$150	
Posey	Bentonville	Station		150	
					$300

Cleveland, Cincinnati, Chicago & St. Louis—Whitewater division:

Connersville	Connersville	Depot		$1,000	
					1,000
Total in Fayette county					$4,625

Floyd county.

Kentucky & Indiana Bridge Co.:

			Toll and gate keeper's house	$150	
			Watch-house	30	
					$180

Louisville, Evansville & St. Louis:

New Albany	New Albany	Pass. and office building		$1,000	
"	"	Freight-house		2,000	
"	"	Engine-house		400	
"	"	Watch-house		20	
"	"	Watch-house		20	
"	"	Watch-house		20	
"	"	Watch-house		20	
"	"	Watch-house		20	
"	"	Watch-house		20	
"	"	Sand-house		50	
"	"	Storehouse		100	
"	Georgetown	Pass. and freight house		150	
					3,820

504 Louisville, New Albany & Chicago:

New Albany	New Albany	Tool-house		$15	
"	"	Erecting shop		150	
"	"	Old smith shop		25	
"	"	Wood machine shop		400	
"	"	Store-room		700	
"	"	Round-house and turn-table		7,100	
"	"	Car-cleaner's house		100	
"	"	Paint shops		50	
"	"	Freight-house		3,000	
"	"	Two watch houses		5	
"	"	Passenger depot		1,500	
"	Smith's Mills	Tool-house		15	
					$13,060

Ohio & Mississippi:

New Albany	New Albany	Depot		$2,000	
"	"	Freight depot		500	
					2,500

Pittsburgh, Cincinnati, Chicago & St. Louis:

New Albany	New Albany	Passenger-house		$2,500	
"	"	Freight-house		2,500	
"	"	Pass. house, 5th street		200	
"	"	Pass. house, 9th street		200	
"	"	Pass. house, 16th street		200	
"	"	Telegraph office		20	
"	"	Five watch-houses		140	
					5,760
Total in Floyd county					$25,320

Fountain county.

Attica, Covington & Southern:

Troy		Covington	Station	$250	
					$250

Chicago & Indiana Coal:

Logan		Attica	Passenger station	$400	
"		"	Freight-house	500	
"		"	Old depot	75	
"		"	Old shop	50	
"		"	Engine-house	300	
"		"	Section-house	50	
"		"	Two tool-houses	20	
"		"	Pump-house	175	
	Logan	"	Tank-house	350	
505	Shawnee	Rob Roy	Old building	25	
	"	"	Telegraph office	35	
Van Buren		Stone Bluff	Tank and pump	400	
"		"	Tool-house	10	
"		"	Coal chute	300	
"		"	Stock pen	30	
"		Veedersburg	Half freight-house	75	
"		"	Tool-house	10	
Mill Creek		Yeddo	Station	225	
"		"	Coal-house	10	
"		"	Privy	5	
"		"	Freight-house	50	
"		"	Old engine-house	50	
"		"	Tool-house	10	
"		Kingman	Station	250	
"		"	Tank and pump	400	
"		"	Tool-house	10	
"		"	Stock pen	30	
"		"	Pump-house	125	
					$3,970

Peoria & Eastern:

Cain	Hillsboro'	Depot	$200	
Van Buren	Veedersburg	Depot	200	
Troy	Covington	Tank and depot	400	
				800

Toledo, St. Louis & Kansas City:

Richland	Mellott	Depot	$50	
"	Stevens	Depot	50	
Van Buren	Veedersburg	Tank	100	
Fulton	Cates	Depot	50	
"	Silver Wood	Tank	100	
				350

Wabash:

Logan		Attica	Station	$500	
"		"	Baggage-room	100	
"		"	Closet	25	
"		"	Freight-house and office	300	
"		"	Hand-car house	20	
"		"	Tank	400	
"		"	Power-house	300	
"		"	Coal-house	20	
Davis		Independence	Station	300	
"		"	Section and hand-car house	70	
					2,035
Total in Fountain county					$7,405

506 Franklin county.

Cleveland, Cincinnati, Chicago & St. Louis—Whitewater division:

Laurel	Laurel	Depot	$450	
"	"	Water tank	200	
Metamora	Metamora	Depot	450	
Brookville	Brookville	Depot	400	
"	"	Water tank	350	
Highland	Cedar Grove	Depot	50	
				$1,900
Total in Franklin county				$1,900

Fulton county.

Chicago & Erie:

Akron	Akron	Pass. and freight house	$200	
Henry	Lake 16	Four ice-houses	2,500	
Rochester	Rochester	Water tank and pump	400	
Aubeenaubee	Leiters	Pass. and freight house	200	
"	Marshland	Pass. and freight house	25	
				$3,325

Lake Erie & Western:

Rochester	Rochester	Station	$300	
"	"	Water tank	400	
"	"	Power-house	25	
"	"	Coal-house	10	
"	"	Water-closet	5	
"	"	Hand-car house	10	
				750

Terre Haute & Logansport:

Wayne	Grass Creek	Water tank	$200	
"	"	Depot	60	
Union	Kewanna	Depot	425	
"	"	Tool-house	10	
Aubeenaubee	Marshland	Depot	125	
				820
Total in Fulton county				$4,895

Gibson county.

Evansville & Indianapolis:

Barton	Somerville	Freight and passenger house	$250	
Columbia	Oakland City	Freight and passenger house	1,100	
				$1,350

507 Evansville & Terre Haute:

Patoka	Princeton	Passenger-house	$3,000	
"	"	Freight-house	2,500	
White River	Patoka	Freight and passenger house	600	
"	"	Pump-house and tank	400	
"	Hazleton	Freight and passenger house	350	
Johnson	Ft. Branch	Freight and passenger house	3,000	
"	"	Water station	200	
"	Haubstadt	Freight and passenger house	250	
Montgomery	Owensville	Freight and passenger house	400	
				10,700

Louisville, Evansville & St. Louis:

Center	Francisco	Pass. and freight house	$200	
Patoka	Princeton	Water tank	150	
White River	E. Mt. Carmel	Water tank	150	
				500
Total in Gibson county				$12,550

Grant county.

Cincinnati, Wabash & Michigan:

Center	Marion	Station	$500	
"	"	Water tank	200	
"	"	Round-house	200	
Mill	Jonesboro'	Station	300	
Fairmount	Fairmount	Station	300	
"	"	Water tank	200	
				$1,700

Pittsburg, Cincinnati, Chicago & St. Louis:

Jefferson	Upland	Station	$450	
"	"	Tool-house	50	
Mill	Jonesboro'	Station	550	
"	"	Tool-house	45	
Center	Marion	Station	800	
"	"	Water tank	500	
"	"	Storehouse	50	
"	"	Tool-house	45	
"	"	Tool-house	50	
"	"	Coal bin	15	
"	"	Two watch-houses	70	
Pleasant	Sweetser	Station	500	
"	"	Tool-house	40	
Richland	Mier	Coal-house	10	
				3,175

508 Toledo, St. Louis & Kansas City:

Van Buren	Landersville	Depot	$225	
Washington	N. Marion	Tank	250	
"	"	Storehouse	25	
Center	Marion	Depot	300	
Franklin	Herbst	Depot	75	
Sims	Swayzee	Depot	225	
"	Sims	Depot	75	
"	"	Tank	250	
				$1,425
Total in Grant county				$6,300

Greene county.

Bedford & Bloomfield:

Jackson	Owensburg	Depot	$100	
"	"	Tank	10	
"	Koleen	Depot	100	
Richland	Bloomfield	Depot	100	
"	"	Tank	10	
"	Mineral City	Depot	100	
				$420

Evansville & Indianapolis:

Cass	Newberry	Freight and pass. house	$150	
Fairplay	Elliston	Freight and pass. house	150	
Jefferson	Worthington	Freight and pass. house	250	
				550

Indiana & Illinois Southern:

Grant		Water tank	$25	
				25

Indianapolis & Vincennes:

Jefferson	Worthington	Station	$400	
"	"	Water tank	400	
"	"	Pump-house	20	
Fairplay	Switz City	Station	150	
Washington	Lyons	Station	150	

Indianapolis & Vincennes—Continued:

Stafford	Marco	Station	$360		
"	"	Water tank	200		
"	"	Pump-house	20		
Stockton	Black Creek	Water tank	100		
"	"	Pump-house	10		
					$1,750
Total in Greene county					$2,745

509 Hamilton county.

Lake Erie & Western:

Delaware	Fishers	Station	$50		
"	"	Hand-car house	10		
Noblesville	Noblesville	Pass. and freight station	400		
"	"	Water tank	100		
"	"	Power-house	50		
"	"	Coal-house	20		
"	"	Hand-car house	10		
Jackson	Cicero	Station	200		
"	"	Coal-house	5		
"	Arcadia	Station	200		
"	"	Hand-car house	10		
					$1,055

Louisville, New Albany & Chicago:

Washington	Westfield	Depot	$200		
"	"	Tool-house	15		
"	Horton	Tank	100		
"	"	Depot	200		
"	"	Tool-house	15		
Clay	Carmel	Depot	200		
"	"	Tool house	15		
Adams	Sheridan	Tool-house	15		
"	"	Depot	200		
					960

Midland:

Noblesville	Noblesville	Depot	$200		
"	"	Tank	200		
"	"	Tool-house	10		
Washington	Westfield	Depot	75		
"	"	Tool-house	10		
"	Eagletown	Depot	75		
"	"	Tool-house	10		
"	Jolietville	Depot	75		
"	"	Tool-house	10		
					665
Total in Hamilton county					$2,680

Hancock county.

Cincinnati, Hamilton & Indianapolis:

Brandywine	Reedville	Pass. and freight depot	$200		
Sugar Creek	Palestine	Pass. and freight depot	600		
"	"	Hand-car house	25		
					$825

510 Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division:

Warren	Fortville	Water station	$200		
"	"	Tool shed	30		
"	"	Section-house	30		
"	"	Section-house	20		
					280

Peoria & Eastern, Eastern division:

Brown	Wilkinson	Depot	$200	
Center	Maxwell	Depot	200	
Buck Creek	Mohawk	Water tank	200	
				$600

Pittsburgh, Cincinnati, Chicago & St. Louis:

Jackson	Charlottesville	Station-house	$450	
"	"	Tool-house	25	
Center	Greenfield	Passenger-house	800	
"	"	Freight-house	400	
"	"	Tool-house	25	
Sugar Creek	Philadelphia	Station	450	
"	"	Tool-house	15	
"	"	Water tank	400	
"	"	Pump-house	50	
"	"	Foreman's house	200	
				2,815
Total in Hancock county				$4,520

Harrison county.

Louisville, Evansville & St. Louis:

Franklin	Near Crandall	Water tank	$75	
"	"	Pass. and freight house	200	
"	Mott	Pass. and freight house	200	
Spencer	De Pauw	Crusher and engine-house	75	
"	"	Pass. and freight house	100	
				$650

Louisville, New Albany & Corydon:

Jackson	Corydon Jc.	Depot	$125	
"	Harrison	Water tank	50	
"	Corydon	Depot	150	
				325
Total in Harrison county				$975

511 Hendricks county.

Cleveland, Cincinnati, Chicago & St. Louis—St. Louis div.:

Washington	Spray	Hand-car house	$30	
"	Avon	Telegraph office	10	
"	"	Depot	50	
"	"	Hand-car house	30	
"	"	Pump-house	450	
Center	Danville	Freight-house	200	
"	"	Depot	1,000	
"	"	Hand-car house	30	
"	"	Section-house	20	
"	"	Water station	500	
Marion	Hadley	Water station	200	
"	"	Hand-car house	30	
Clay	Reno	Depot	300	
"	"	Hand-car house	30	
				$2,880

Indianapolis, Decatur & Western:

Lincoln	Oakley	Station	$100	
Union	Montclair	Station	150	
Eel River	North Salem	Station	150	
"	"	Water tank	200	
				600

Peoria & Eastern—Western division:

Lincoln	Brownsburg	Depot	$300	
Middle	Pittsboro'	Depot	200	
Eel River		Water tank	50	
				550

Terre Haute & Indianapolis:

Guilford	Plainfield	Depot	$100	
"	"	Freight-house	50	
"	"	Watch-house	10	
"	"	Water tank	75	
Liberty	Cartersburg	Freight-house	25	
"	"	Depot	75	
"	"	Section-house	75	
"	"	Hand-car house	10	
"	Clayton	Hand-car house	10	
"	"	Section-house	75	
"	"	Depot	100	
"	Summit	Watch-house	5	
Clay	Amo	Pump-house	30	
"	"	Water tank	70	
"	"	Depot	100	
"	Coatsville	Hand-car house	20	
"	"	Depot	600	
"	"	Coal-house	15	
				$1,445
Total in Hendricks county				$5,475

512 Henry county.

Ft. Wayne, Cincinnati & Louisville:

Spiceland	Dunreith	Passenger and freight house	$300	
"	Spiceland	Passenger and freight house	300	
Henry	New Castle	Water tank	350	
"	"	Half passenger-house	800	
"	"	Freight-house	350	
Prairie	New Castle Jc.	Telegraph office	200	
"	Springport	Water tank	300	
				$2,600

Peoria & Eastern—Eastern division:

Blue River	Messick	Water tank	$200	
"	Moreland	Depot	400	
Henry	New Castle	Depot	600	
Greensborough	Kennard	Depot	600	
"	"	Water tank	200	
				2,000

Pittsburg, Cincinnati, Chicago & St. Louis:

Dudley	Straghn	Station	$500	
"	"	Tool-house	25	
"	"	Coal-house	5	
Franklin	Lewisville	Tool-house	25	
Spiceland	Dunreith	Tool-house	25	
Wayne	Knightstown	Passenger-house	900	
"	"	Freight-house	350	
"	"	Water tank	400	
"	"	Pump-house	75	
"	"	Tool-house	15	
"	"	Coal-house	20	
"	"	Watch-house	25	
Henry	New Castle	Passenger-house	700	
"	"	Transfer-house	50	
"	"	Freight-house	250	
"	"	Tool-house	20	
"	"	Watch-house	30	
Jefferson	Sulphur Springs	Station	400	
"	"	Water tank	500	
"	"	Pump-house	50	
"	"	Coal-house	20	
"	"	Tool-house	20	
				4,405

Cincinnati, Wabash & Michigan:

Wayne	Knightstown	Station	$250		
					$250
Total in Henry county					$9,255

513 Howard county.

Lake Erie & Western:

Center	Kokomo	Pass. and freight station	$100		
"	"	Freight-house	200		
"	Kokomo Jc.	Water tank	100		
"	"	Hand-car house	10		
"	"	Passenger station	100		
					$510

Pittsburgh, Cincinnati, Chicago & St. Louis:

Center	Kokomo	Station	$1,500		
"	"	Two tool-houses	10		
"	"	Pump-house	40		
"	"	Water tank	150		
"	"	Five watch-houses	60		
					1,760

Toledo, St. Louis & Kansas City:

Jackson	Sycamore	Depot	$125		
Liberty	Greentown	Depot	250		
Center	Kokomo	Depot	250		
"	"	Tank	150		
Honey Creek	Russiaville	Depot	150		
					925
Total in Howard county					$3,195

Huntington county.

Chicago & Erie:

Huntington	Huntington	Round-house	$8,000		
"	"	Machine shop	8,000		
"	"	Engine-house	3,000		
"	"	Eating-house	1,500		
"	"	Passenger-house	1,500		
"	"	Freight-house	500		
"	"	Water tank and pump-house	750		
"	"	Coal chute	550		
"	"	Old buildings and sheds	500		
"	"	M. mechanic's office and storehouse	1,500		
"	"	Supply store	100		
"	"	Transfer-house (half)	350		
"	"	Yard office	100		
"	"	Blacksmith shop	1,500		
"	"	Boiler shop	1,500		
Warren	West Point	Pass. and freight house	200		
Rock Creek	Markle	Pass. and freight house	200		
					$29,750

514 Toledo, St. Louis & Kansas City:

Salamonie	Warren	Depot	$200		
"	"	Freight-house	125		
"	"	Tank	150		
					475

Wabash:

Jackson	Roanoke	Station	$1,000		
"	"	Tank	800		
"	"	Two hand-car-houses	100		
"	"	Coal-house	50		
"	"	Coal-house	50		

Wabash—Continued:

Jackson	Roanoke	Power-house	$800		
Huntington	Huntington	Station and baggage-room	800		
"	"	Freight-house	1,000		
"	"	Two hand-car houses	40		
Dallas	Andrews	Station	1,000		
"	"	Engine-house	15,000		
"	"	Machine shop	4,000		
"	"	M. M. office	250		
"	"	Tank	1,500		
"	"	Coal shed	400		
"	"	Sixteen coal chutes	350		
"	"	Switch-house	20		
"	"	Sand-house	50		
"	"	Sand-house	25		
"	"	Oil-house	200		
"	"	Closet	10		
"	"	Repair shop	200		
"	"	Store room	200		
"	"	Telegraph office	300		
"	"	Oil-house	25		
"	"	Carpenter shop	200		
"	"	Lumber shed	100		
"	"	Store-room	150		
"	"	B. B. store-room	250		
"	"	Lumber shed	100		
"	"	Iron shed	75		
"	"	Hand-car house	40		
"	"	Ice-house	100		
"	"	Coal-house	15		
"	"	Coal platform	50		
"	"	Oil-house	25		
"	"	Engine-house	25		
"	"	Ice-house	75		
					$29,375
Total in Huntington county					$59,600

515 Jackson county.

Evansville & Richmond:

Owen	Kurtz	Water tank	$100	
Jackson	Seymour	Water tank	100	
"	"	Freight-house	100	
"	"	Passenger-house	125	
				$425

Ohio & Mississippi:

Jackson	Seymour	Depot	$1,400	
"	"	Baggage-room	75	
"	"	Freight-house	40	
"	"	Round-house	2,100	
"	"	Machine shop	2,800	
"	"	Water tank	200	
"	"	Pump-house	20	
"	"	Coal bins	3,000	
Brownstown	Shields	Section-house	30	
"	Brownstown	Depot	200	
"	"	Water station	200	
Carr	Velonia	Section-house	15	
"	"	Depot	300	
"	Medora	Depot	100	
"	Sparksville	Depot	35	
"	"	Section-house	45	
"	Sparks Ferry	Water station	300	
				10,860

Pittsburgh, Cincinnati, Chicago & St. Louis:

Vernon	Crothersville	Station	$600		
"	"	Tool-house	50		
Washington	Chest. Ridge	Tool-house	10		
Jackson	Seymour	Station	1,000		
"	"	Tool-house	100		
"	"	Three watch-houses	60		
Redding	Rockford	Station	150		
"	"	Water tank	450		
"	"	Pump-house	50		
					$2,470
Total in Jackson county					$13,755

Jasper county.

Chicago & Indiana Coal:

Kankakee	Dunns	Station	$90		
"	"	Tank and pump	300		
Wheatfield	Wheatfield	Station	90		
"	"	Freight depot	15		
"	"	Hand-car house	20		
Walker	Hogan	Station	90		
Union	Fair Oaks	Coal chute	30		
					$635

516 Indiana, Illinois & Iowa.:

Kankakee	Dunnville	Depot	$100		
Wheatfield	Wheatfield	One-half depot	150		
"	"	Old depot	50		
"	"	Tool-house	10		
Keener	Demotte	Tool-house	10		
"	"	Depot	100		
					$520

Louisville, New Albany & Chicago:

Hanging Grove	Marlboro'	Depot	$150		
Marion	Pleasant Ridge	Depot	100		
"	Iroquois River	Tank	100		
"	"	Pump-house	50		
"	Rensselaer	Tool-house	15		
"	"	Depot	200		
Newton	Surrey	Depot	150		
Union	Fair Oaks	Depot	200		
"	"	Tool-house	10		
					975

Pittsburgh, Cincinnati, Chicago & St. Louis:

Carpenter	Remington	Station	$150		
"	"	Two tool-houses	90		
					240
Total in Jasper county					$2,370

Jay county.

Cincinnati, Richmond & Fort Wayne:

Bear Creek	Briant	Depot	$300		
Wayne	Portland	Passenger-house	800		
"	"	Freight-house	1,000		
"	"	Half transfer-house	50		
"	"	Engine-house	125		
"	"	Water tank	600		
"	"	Office	50		
					$2,925

Lake Erie & Western:

Wayne		Portland		Pass. and freight station	$200
"		"		Half transfer-house	50
Jefferson		Como		Pass. and freight station	150
Richland		Red Key		Pass. and freight station	150
					$550

517 Pittsburgh, Cincinnati, Chicago & St. Louis:

Jefferson		Powers		Tool-house	$45
"		"		Coal-house	20
Richland		Red Key		Water tank	500
"		"		Pump-house	60
"		"		Coal-house	20
"		"		Tool-house	45
"		"		Station	450
"		Dunkirk		Tool-house	45
"		"		Station	800
					$1,985
Total in Jay county					$5,460

Jefferson county.

Ohio & Mississippi:

Graham		Big Creek		Water station	$150
"		Deputy		Depot	80
"		"		Section-house	40
					$270

Pittsburg, Cincinnati, Chicago & St. Louis:

Madison		Madison		Passenger-house	$1,000
"		"		Freight-house	4,000
"		N. Madison		Station	200
"		"		Engine-house	1,800
"		"		Machine shop	800
"		"		Smith shop	500
"		"		Store-room	500
"		"		Water tank	50
"		Wirt		Station	80
Lancaster		Dupont		Station	25
"		"		Tool-house	10
"		"		Water tank	500
					9,465
Total in Jefferson county					$9,735

Jennings county.

Ohio & Mississippi:

Campbell		Nebraska		Depot	$90
"		"		Water station	350
Center		North Vernon		Depot	6,000
"		"		Water station	500
"		"		Freight depot	150
Spencer		Hayden		Depot	70
"		"		Section-house	30
Center		North Vernon		Engine-house	150
Lovett		Lovett		Depot	90
"		"		Section-house	50
Montgomery		Paris		Depot	75
Center		North Vernon		Dwelling	30
"		"		Dwelling	30
					$7,615

518 Pittsburgh, Cincinnati, Chicago & St. Louis:

Vernon		Grayford		Water tank	$25
"		Vernon		Station	150
Center		North Vernon		Station	10
Geneva		Rock Creek		Water tank	100
					$285

Vernon, Greensburg & Rushville:

Center	North Vernon	Depot	$100	
"	"	Tool-house	10	
Sand Creek	Brewersville	Depot	20	
"	"	Tool-house	10	
"	"	Water station	300	
				$440
Total in Jennings county				$8,340

Johnson county.

Fairland, Franklin & Martinsville:

Johnson	Franklin	Depot	$200	
"	"	Two tool-houses	20	
"	Uneyville	Water station	100	
				$320

Pittsburgh, Cincinnati, Chicago & St. Louis:

Blue River	Edinburg	Station	$3,000	
"	"	Tool-house	100	
"	"	Two watch-houses	40	
Franklin	Franklin	Station	2,000	
"	"	Tool-house	40	
"	"	Water tank and pump	1,000	
"	"	Two watch-houses	40	
Pleasant	Whiteland	Station	400	
"	Greenwood	Station	400	
"	"	Tool-house	15	
				7,035
Total in Johnson county				$7,355

Knox county.

Evansville & Terre Haute:

Johnson	Decker	Passenger-house	$50	
"	"	Watch-house	25	
Vincennes	Vincennes	Freight station	3,500	
"	"	Water station	100	
"	"	Coal chute	100	
Busseron	Emison	Freight and passenger house	75	
"	Oaktown	Freight and passenger house	100	
"	"	Water station	25	
				$3,975

519 Indianapolis & Vincennes:

Vigo	Sanborn	Station	$150	
"	Westphalia	Station	25	
"	Edwardsport	Station	200	
"	"	Water tank	150	
"	"	Pump-house	40	
Washington	Bruceville	Station	150	
Vincennes	Vincennes	Passenger station	600	
"	"	Freight-house	500	
"	"	Tool-house	50	
"	"	Engine-house	3,000	
"	"	Water tank	150	
"	"	Supply-house	50	
"	"	Coal-house	30	
				$5,095

Ohio & Mississippi:

Wheatland	Depot	$60	
"	Section-house	20	
Seven Mile	Section-house	35	
Vincennes	Engine-house	25	

Ohio & Mississippi—Continued:

	Vincennes		Supply-house	$25	
	"		Freight-house	3,000	
	"		Freight-house	100	
	"		Water-house	10	
					$3,275
Total in Knox county					12,345

Kosciusko county.

Baltimore & Ohio & Chicago:

Turkey Creek	Cedar Beach	Passenger shed	$50	
"	Syracuse	Depot	250	
"	"	Grain elevator	1,000	
"	"	Water station	700	
"	"	Stock pens	10	
"	"	Hand-car house	10	
Van Buren	Milford Jct.	Half passenger depot	200	
"	"	Grain elevator	1,000	
"	"	Hand-car house	10	
"	"	Stock pens	10	
Jefferson	Gravelton	Passenger depot	200	
"	"	Water station	800	
"	"	Two hand-car houses	20	
				$4,260

520 Cincinnati, Wabash & Michigan:

Van Buren	Milford	Station	$150	
Plain	Leesburg	Station	200	
Wayne	Warsaw	Station, 2-stall round-house, water tank, transfer-house	1,000	
Clay	Claypool	Station	100	
Lake	Silver Lake	Station	250	
				$1,700

New York, Chicago & St. Louis:

Jackson	Sidney	Station	$400	
"	"	Tool-house	20	
"	"	Cattle pens	10	
Clay	Packertown	Station	400	
"	Claypool	Station	200	
"	"	Car-repair house	20	
"	"	Freight-house	120	
"	"	Dwelling	20	
"	"	Tool-house	20	
"	"	Telegraph office	10	
"	"	Water tank	300	
"	"	Pump-house	40	
Seward	Burkett	Station	70	
"	"	Tool-house	20	
"	"	Stock pens	10	
Franklin	Mentone	Station	500	
"	"	Tool-house	20	
Harrison	"	Stock pens	10	
				2,190

Pittsburgh, Fort Wayne & Chicago:

	Pierceton	Tank	$400	
	"	Pump-house	325	
	"	Freight house	2,850	
	"	Hand-car house	150	
Wayne	Eagle Lake	Station	700	
Warsaw	Warsaw	Tank	400	
"	"	Passenger-house	600	
"	"	Freight-house	750	
"	"	Engine-house	250	

Pittsburgh, Fort Wayne & Chicago—Continued:

Warsaw	Warsaw	Pump-house	$325	
"	"	Hand-car house	150	
"	"	Half transfer-house	300	
Etna Green	Etna Green	Pass. and freight-house	500	
				$7,700
Total in Kosciusko county				$15,850

521 Lagrange county.

Grand Rapids & Indiana:

Johnson	Valentine	Depot	$200	
Bloomfield	Lagrange	Depot	400	
Lima	Lima	Depot	350	
"	Crooked Creek	Water tank	400	
				$1,350

Sturgis, Goshen & Elkhart:

Newbury	Shipshewana	Passenger-house	$400	
"	"	Pump-house	50	
"	"	Water tank	400	
				850
Total in Lagrange county				$2,200

Lake county.

Baltimore & Ohio & Chicago:

Hobart	Miller's	Passenger depot	$300	
"	"	One-half signal tower	80	
"	"	Water station	600	
"	"	Hand-car house	10	
Calumet	Edgmoor	Water station	200	
"	"	Telegraph office	20	
"	"	Two hand-car houses	20	
"	"	Dwelling	200	
"	"	Telegraph office	20	
North	"	Hand-car house	10	
				$1,460

Chicago & Erie:

Winfield	Palmers	Pass. and freight-house	$200	
"	Winfield	Pass. and freight-house	200	
Center	Crown Point	Passenger-house	300	
"	"	Freight-house	200	
"	"	Water tank and pump-house	400	
St. John	Griffith	One-half freight-house	25	
"	"	Agent's house	125	
North	Highlands	Pass. and freight-house	200	
"	Calumet	Tank and pump-house	600	
"	Hammond	Tank and pump-house	400	
"	"	Pass. and freight-house	200	
"	"	Eating-house	1,200	
"	"	Round-house	2,000	
"	"	Coal-chute	600	
"	"	Yard office	100	
"	"	Two flagmen's houses	50	
"	"	Freight depot	100	
"	"	Switchmen's shanty	25	
				6,925

522 Chicago & Calumet Terminal:

East Chicago	Depot	$1,000	
"	Round-house	800	
"	Machine shop	400	
"	Coal shed	150	
"	Water tank	150	
			$2,500

Chicago & Grand Trunk:

Ross		Ainsworth		Passenger and freight-house	$500	
"		"		Section-house	250	
"		"		Tool-house	25	
"		Redesdale		Passenger and freight-house	400	
"		"		Water tank and pump	400	
"		"		Tool-house	25	
St. Johns		Griffiths		Agent's office	100	
North		Maynard		Passenger and freight-house	400	
						$2,100

Elgin, Joliet & Eastern:

St. John	Dyer		Station	$300	
"	"		Section-house	200	
"	"		Water tank	400	
"	"		Pump-house	75	
"	"		Tool-house	15	
"	"		Outhouse	15	
"	Hartsdale		Signal tower	250	
"	Griffith		Section-house	200	
"	"		Tool-house	15	
"	"		Outhouse	15	
"	"		Signal tower	250	
"	Hobart		Station	250	
"	"		Section-house	175	
"	"		Two signal towers	750	
"	"		Water tank	400	
"	"		Pump-house	75	
"	"		Old school-house	75	
"	"		Tool-house	15	
"	"		Two outhouses	30	
					3,505

Indiana, Illinois & Iowa:

Cedar Creek	Shelby		Half depot	$150	
"	"		Two tool-houses	20	
"	"		Tank and pump-house	300	
West Creek	Lineville		Old depot	100	
					570

Joliet & Northern Indiana:

Calumet	Ross		Pass. and freight-house ($\frac{1}{2}$)	$500	
"	"		Hand-car house	10	
St. John	Dyer		Passenger-house	600	
"	"		Freight-house	150	
"	"		Hand-car house	10	
"	"		Water tank and pump	250	
"	"		Grain elevator	800	
					2,320

523 Lake Shore & Michigan Southern:

North	Whiting		Passenger-house		
"	"		Freight-house		
"	"		Dwelling		
"	"		Dwelling	$575	
"	"		Hand-car house		
"	"		Interlocking tower		
Calumet	Pine		Passenger-house		
"	"		Dwelling		
"	"		Dwelling		
"	"		Hand-car house	650	
"	"		Pump-house		
"	"		Ice-house		
"	"		Water tank		
Hobart	Millers		Passenger-house		
"	"		Dwelling		
"	"		Dwelling		
"	"		Ice-house	650	
"	"		Hand-car house		
"	"		Interlocking tower		
					$1,875

Louisville, New Albany & Chicago:

Cedar Creek	Water Valley	Tank	$100	
"	"	Watch-house	150	
"	Shelby	One-half depot	150	
"	Lowell	Two tool-houses	30	
"	"	Depot	150	
West Creek	Creston	Depot	150	
Hanover	Parsiley	Tool-house	15	
"	"	Depot	10	
"	"	Turn-table	100	
"	"	Tank	100	
"	"	Pump-house	50	
St. John	St. John	Depot	150	
"	"	Tool-house	15	
"	Dyer	Tool-house	15	
"	"	Depot	150	
North	Maynard	Watch-house	15	
"	"	Depot	50	
"	Calumet	Tank	100	
"	"	Pump-house	50	
"	Hammond	Tool-house	15	
"	"	Two dwellings	300	
"	"	One dwelling	100	
"	"	One dwelling	50	
"	"	Depot	300	
"	"	Four watch-houses	100	
				$2,415

524 Michigan Central:

Hobart	Lake	Engine-house	$200	
"	"	Water tank	300	
"	"	Passenger-house	1,500	
"	"	Telegraph office	300	
"	"	Freight-house	150	
"	"	Two hand-car houses	30	
"	"	Ice-house	10	
"	"	Pump and pump-house	500	
"	"	Agent's residence	400	
Calumet	Tolleston	Passenger-house	400	
"	"	Target shed	10	
"	"	Target-tender's house	250	
"	"	Hand-car shed	15	
"	"	Coal shed	10	
North	Gibsons	Vacated passenger-house	150	
"	"	Water tank and pump	300	
"	Hammond	Passenger-house	600	
"	"	Freight-house	300	
"	"	Hand-car house	20	
"	"	Coal shed	20	
				$5,465

New York, Chicago & St. Louis:

Hobart	Hobart	Station	$150	
"	"	Tool-house	20	
"	"	Cattle pens	5	
"	"	Water tank	300	
"	"	Pump-house	40	
Calumet	Joliet Pit	Section-house	150	
"	"	Station	100	
"	"	Tool-houses (2)	40	
"	"	Pump-house	40	
"	"	Water tank	260	
"	"	Section-house	200	
North	Hammond	Tool-house	20	
"	"	Watch-house	10	
				1,335

Pittsburgh, Ft. Wayne & Chicago:

Hobart	Hobart	Station	$850		
"	Liverpool	One-half station and telegraph office	75		
"	"	Interlocking signal tower	325		
Calumet	Tolleston	Interlocking signal tower	325		
"	Clarke	Passenger-house	350		
"	"	Section-house	350		
"	"	Frost-proof tub	300		
"	"	Pump-house	325		
"	Berry Lake	Dwelling	600		
North	Fields	Telegraph office	25		
"	"	Interlocking tower	325		
"	"	Waiting-room	25		
"	"	Freight shed	30		
					$3,905

525 Pittsburgh, Cincinnati, Chicago & St. Louis:

Winfield	Le Roy	Station	$100		
"	"	Pump-house	25		
"	"	Tool-house	40		
"	"	Coal-house	20		
"	"	Water tank	500		
Center	Crown Point	Passenger-house	900		
"	"	Freight-house	275		
"	"	Tool-house	40		
"	"	Tool-house	50		
"	"	Engine-house	100		
"	"	Supervisor's office	75		
St. John	Schererville	Station	700		
"	"	Tool-house	40		
"	Hartsdale	One-half station	20		
"	"	Pump-house	50		
"	"	Water tank	500		
"	"	One-half interlocking tower	375		
					3,810

State Line & Indiana City:

Hammond	Pass. and freight house	$1,400	
East Chicago	Pass. and freight house	1,400	
			2,800
Total in Lake county			$40,985

La Porte county.

Baltimore & Ohio & Chicago:

Union	Union Center	Passenger depot	$300		
"	"	Hand-car house	10		
Noble	Wellsboro'	Grain elevator	1,000		
"	"	One-third passenger depot	150		
"	"	Water station	250		
"	"	Two hand-car houses	20		
"	"	Stock pens	10		
Clinton	Alida	Half passenger depot	150		
"	"	Grain elevator	700		
"	"	Dwelling-house	140		
"	"	Hand-car house	10		
"	"	Stock pens	10		
					$2,750

Chicago & Erie:

Dewey	Wilders	Depot	$50		
					50

Chicago & Indiana Coal:

Dewey	La Crosse	Hand-car house	$20		
"	Wilders	Freight platform	30		
					50

526 Chicago & Grand Trunk:

Lincoln	Mill Creek	Tool-house	$25	
Pleasant	Stillwell	Passenger-house	200	
"	"	Freight shed	100	
"	"	Water tank, pump, etc.	500	
"	"	Tool-house	25	
"	"	Coal chute	200	
"	Kingsbury	Pass. and freight house	200	
"	"	Tool-house	25	
Noble	Wellsboro'	Tool-house	25	
"	"	Pass. and freight house	200	
"	Union Mills	Pass. and freight house	200	
"	"	Tool-house	25	
"	"	Elevator	500	
Clinton	Haskell's	Pass. and freight house	300	
"	"	Tool-house	25	
"	"	Agent's house	200	
				$2,750

Chicago & West Michigan:

Springfield		Tool-house	$25	
Center	Hoover	Half frt. and pass. depot	200	
"	La Porte	Water tank	600	
"	"	Engine-house and turn-table	600	
"	"	Freight and pass. depot	1,500	
"	"	Two section tool-houses	50	
Noble	Wellsboro'	One-third freight and passenger house	100	
"	"	Two tool-houses	50	
Hanna	Hanna	Freight and passenger house	200	
"	"	Watch-house	15	
"	"	Tool-house	25	
"	"	One-half transfer-house	175	
"	Thomaston	Freight depot	125	
Dewey	La Crosse	Tool-house	25	
"	"	Engine-house and turn-table	600	
"	"	Tank and windmill	400	
"	"	Pump-house	100	
"	"	Freight and passenger depot	800	
				5,590

Lake Erie & Western:

Johnson	Kankakee	Water tank	$150	
"	"	Power-house	20	
Pleasant	Stillwell	One-half station	50	
"	"	One-half transfer-house	100	
"	"	Hand-car house	10	
Center	La Porte	Passenger and freight station	400	
"	"	Car-oiler's house	20	
"	"	Dwelling	50	
"	"	Shed	10	
Center	"	Oil-house	10	
527 "	"	Water tank	250	
"	"	Hand-car house	10	
Center	La Porte Junct.	One-half passenger-house	100	
Michigan	Michigan City	Repair shop	15	
"	"	Hand-car house	10	
"	"	Hand-car house	10	
"	"	Storehouse	10	
				1,225

Lake Shore & Michigan Southern:

New Durham	Otis	Passenger-house	$1,000
"	"	Freight-house	
"	"	Tower-house	
"	"	Hand-car house	
"	Durham	Freight-house	
"	"	Dwelling	
"	Holmesville	Hand-car house	

Lake Shore & Michigan Southern—Continued:

Center	La Porte	Freight-house		
"	"	Two grain-houses		
"	"	Engine-room		
"	"	Flour-house		
"	"	Pas'nger and eating house		
"	"	Baggage-room		
"	"	Freight office		
"	"	Roadmaster's office		
"	"	Hand-car house		
"	"	Ice-house		
"	"	Telegraph tool-house		
"	"	Water-closet		
"	"	Eating-house and laundry		
"	"	Ice-house	$11,500	
"	"	Ice-house		
"	"	Store-room		
"	"	Paint shop		
"	"	Round-house		
"	"	Boiler-room		
"	"	Engine-room		
"	"	Machine shop		
"	"	Machine-shop addition		
"	"	Blacksmith shop		
"	"	Car shop		
"	"	Hand-car house		
"	"	Hand-car house		
"	"	Two interlocking towers		
"	"	Water tank		
Kankakee	Rolling Prairie	Dwelling		
"	"	Freight-house	600	
"	"	Hand-car house		
				$13,100

528 Louisville, New Albany & Chicago:

Dewey	Riverside	Dwelling	$200	
"	"	Tank	100	
"	"	Pump-house	50	
"	La Crosse	Old depot	25	
Cass	S. Wanatah	Depot	100	
"	"	Depot	50	
"	"	Tank	100	
Clinton	Haskell's	One-half depot	75	
"	"	Dwelling	300	
New Durham	Otis	One-half freight-house	150	
"	Westville	Depot	260	
"	"	Tank	50	
Michigan	Michigan City	Depot	2,000	
"	"	Tank	100	
"	"	Engine-house	3,000	
"	"	Turn-table	100	
				$6,600

Michigan Central:

Michigan	Michigan City	Three switch-houses	$30
"	"	Two hand-car houses	30
"	"	One signal-house	20
"	"	Two signal cable-houses	40
"	"	Tool and oil house	30
"	"	Tool and oil house	30
"	"	Coal shed	15
"	"	Watch-house	10
"	"	Tool-house	10
"	"	Freight-house	1,500
"	"	Passenger-house	7,000
"	"	Machine shop	2,000
"	"	Office	200

Michigan Central—Continued:

Michigan	Michigan City	Round-house	$1,800	
"	"	Round-house	3,500	
"	"	Ice-house	400	
"	"	Ice-house	450	
"	"	Horse barn	20	
"	"	Two water tanks	700	
"	"	Coal shed	150	
"	"	Coal chutes	700	
"	"	Coal office	40	
"	"	House	16	
"	"	Lamp-house	10	
"	"	Sand-house	40	
"	"	Car-repair shop	500	
"	"	Conductors' eating-house	1,500	
"	"	Oil-house	20	
"	"	Coal shed	10	
				$20,765

529 New York, Chicago & St. Louis:

Hanna	Thomaston	Station	$70	
"	"	Tool-house	20	
"	"	Section-house	150	
Cass	Wanatah	Station	70	
"	"	Tool-house	20	
"	"	Section house	150	
"	"	Stock pens	5	
"	"	Water tank	300	
"	"	Pump-house	40	
				825

Pittsburgh, Cincinnati, Chicago & St. Louis:

Dewey	La Crosse	Station	$600	
"	"	Tool-house	40	
				640

Pittsburgh, Ft. Wayne & Chicago:

Hanna	Hanna	One-half transfer-house	$200	
"	"	Hand-car house	150	
"	"	Warehouse	250	
"	"	Pass. and freight house	500	
Cass	Wanatah	Tank	400	
"	"	Frost-proof tub	300	
"	"	Grain warehouse	200	
"	"	Station-house	650	
"	"	Hand-car house	150	
				2,800
Total in La Porte county				$57,145

Lawrence county.

Bedford & Bloomfield:

Shawswick	Bedford	Car shops	$100	
"	"	Blacksmith shop	25	
"	"	Turn-table	50	
Marshall	Reeds	Tank	50	
"	"	Pump-house	25	
Perry	Springville	Depot	100	
				$350

Evansville & Richmond:

Shawswick	Bedford	Freight-house	$150	
"	"	Residences on lot 4	200	
"	"	Residences on lot 5	200	
"	"	Residences on lot 6	200	
"	"	Residences on lot 7	200	

Evansville & Richmond—Continued:

Shawswick	East of Bedford	Tank	$100		
Pleasant Run	Heltonville	Freight and pass. house	125		
					$1,175

530 Louisville, New Albany & Chicago:

Marion	Mitchell	Depot	$100		
"	"	One-half turn-table	50		
"	"	Two tool-houses	30		
"	Burton	Fuel station	200		
Shawswick	White River	Tank	100		
"	"	Pump-house	50		
"	Salt Creek	Depot	20		
"	Bedford	Depot	1,500		
"	"	Car-repair house	30		
"	"	Two tool-houses	30		
Marshall	Guthrie	Two tool-houses	20		
"	"	Tank and house	50		
					2,180

Ohio & Mississippi:

Guthrie	Ft. Ritner	Depot	$25		
"	Tunnelton	Depot	30		
"	Little Tunnel	Building	250		
Bono	Riverdale	Depot	300		
"	"	Section-house	10		
"	"	Water station	325		
Marion	Mitchell	Depot	400		
"	"	One-half freight-house	95		
"	"	Repair shop	90		
"	"	Section-house	40		
Spice Valley	Georgia	Section-house	85		
"	Huron	Depot	150		
					1,800
Total in Lawrence county					$5,505

Madison county.

Cincinnati, Wabash & Michigan:

Van Buren	Summitville	Station	$125		
Monroe	Alexandria	Station	175		
Anderson	Anderson	Station	200		
"	"	Round-houuse	300		
Adams	Markelville	Station	150		
					$950

Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division:

Union	Chesterfield	Passenger-house	$120		
Anderson	Anderson	Passenger-house	600		
"	"	Baggage-room	200		
"	"	Freight-house	250		
"	"	Hand-car house	60		
"	"	Water station	750		
"	"	Coal-house	30		
Fall Creek	Pendleton	Passenger and freight house	120		
"	"	Hand-car house	30		
					2,1—

531 Lake Erie & Western:

Monroe	Gilman	Pass. and freight station	$100		
"	Alexandria	Pass and freight station	200		
"	"	Water tank	200		
Pipe Creek	Elwood	Pass. and freight station	200		
					700

Midland:

	Anderson	Depot	$200	
	"	Tank	50	
	"	Tool-house	10	
	Lapelle	Depot	150	
	"	Tool-house	10	
				$420

Pittsburg, Cincinnati, Chicago & St. Louis:

Anderson	Anderson	Station	$700	
"	"	Engine-house	75	
"	"	Supervisor's office	150	
"	"	Tool-house	10	
"	"	Water tank	300	
"	"	Watch-house	10	
Pipe Creek	Elwood	Station	1,200	
				2,445
Total in Madison county				$6,675

Marion county.

Belt:

Center		Train-dispatcher's office	$600	
"		Machine shops	2,300	
"		Water station	400	
"		Two flag-houses	20	
"		Nine flag houses	135	
"		Three switch-houses	60	
"		One switch-house	25	
"		One switch-house	30	
"		Two switch-houses	80	
"		Five hand-car houses	250	
"		Interlocking signal tower	500	
				$4,400

Cincinnati, Hamilton & Indianapolis:

Center	Indianapolis	Freight-house	$5,000	
"	"	Engine-house	4,000	
"	"	Brick-house	700	
"	"	Tool-house	100	
"	"	Water tank	150	
"	Julietta	Passenger depot	200	
"	"	Hand-car house	25	
				10,175

532 Cleveland, Cincinnati, Chicago, & St. Louis—Chicago division:

Center	Belt yard	Interlocking cabin	$100	
"	"	Office	300	
"	N. Indianapolis	Depot	50	
"	Indianapolis	Freight depot	8,000	
"	"	Machine shops	3,000	
"	"	Water station	200	
"	"	Office	200	
"	"	Supply office	50	
"	"	Two tool-houses	20	
"	"	North St. depot	2,500	
"	"	Tool-house	10	
Franklin	Acton	Depot	200	
"	"	Tool-house	10	
"	Camp Ground	Depot	400	
Pike	Augusta	Depot	10	
"	Beech Grove	Depot	100	
				$15,150

Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division:

Lawrence	Oakland	Pass. and freight house	$480	
"	"	Hand-car house	30	
"	Lawrence	Pass. and freight house	60	
"	"	Hand-car house	30	
Warren	Brightwood	Passenger-house	700	
"	"	Round-house	15,000	
"	"	Machine shop, boiler-room	25,000	
"	"	Blacksmith shop	1,500	
"	"	Store-room and carp't'r shop	3,000	
"	"	Pattern room and office	2,000	
"	"	Car-repair shed	1,000	
"	"	Paint shop	2,000	
"	"	Boiler and sand house	1,000	
"	"	Car-erecting shop	15,000	
"	"	Oil-house	600	
"	"	Lodging-house	2,500	
"	"	Water station	1,800	
"	"	Coal chutes	600	
"	"	Transfer-house	4,000	
"	"	Hand-car house	30	
"	"	Coal shed at depot	100	
Center	Mass. avenue	Passenger-house	3,000	
"	"	Water tank	360	
"	Indianapolis	Freight depot	5,000	
"	"	Agent's office	4,000	
"	"	Transfer depot, office	2,500	
"	"	Ice house and platform	120	
"	"	Hand-car house	30	
"	"	Flag-house	30	
				$91,470

533 Cleveland, Cincinnati, Chicago & St. Louis—St. Louis div.:

Center	Indianapolis	Section-house	$75	
"	"	Kitchen	30	
"	"	Hand-car house	30	
"	West Side	Car-repair house	50	
"	"	Watch-house		
Wayne	Mt. Jackson	Telegraph office	30	
"	Sunnyside	Section-house	300	
				515

Indianapolis, Decatur & Western:

Center	Indianapolis	Freight station	$400	
"	Moorefield	Dispatch office	200	
"	"	Water tank	200	
"	"	Round-house	12,000	
"	"	Oil-house	500	
"	"	Sand-house	100	
"	"	Paint shop	2,500	
Wayne	"	Machine shop	12,000	
"	"	Car shop	12,000	
"	"	Band-boiler shop	12,000	
				51,900

Indianapolis Union:

	Indianapolis	Union station	$500,000	
				500,000

Indianapolis & Vincennes:

Center	Indianapolis	Two watch-houses	$20	
"	West Indianapolis	Watch-houses	10	
"	Belt crossing	Station	30	
Wayne	Maywood	Station	75	
Decatur	Samoa	Station	10	
"	Valley Mills	Station	40	
"	West Newton	Station	40	
				22

Lake Erie & Western:

Center	Indianapolis	Coach shed	$150		
"	"	Freight-house	7,500		
"	"	Freight office	500		
"	"	Engine-house	2,500		
"	"	Water tank	100		
"	"	Power-house	50		
"	"	Yardmaster's office	40		
"	"	Two watch-houses	40		
"	"	Hand-car house	20		
"	"	General office building	15,000		
"	Massachusetts ave.	Half passenger station	1,000		
"	Malott Park	Station	150		
					$27,050

Louisville, New Albany & Chicago:

Washington	Br'd Ripple	Tool-house	$15		
"	"	Tank	100		
"	"	Depot	200		
"	"	Pump-house	50		
					365

534 Peoria & Eastern—Western division:

Center	Indianapolis	Engine-house and office	$6,000		
"	"	Round-house and shop	5,000		
"	"	Tank	150		
"	"	Register office	200		
					$11,350

Pittsburgh, Cincinnati, St. Louis & Chicago:

Center	E. of Indianapolis	Planing mill	$8,000		
"	"	Car shop	13,000		
"	"	Machine shop	25,000		
"	"	Boiler shop			
"	"	Smith shop			
"	"	Power-house	2,500		
"	"	Office and store room	8,000		
"	"	Engine-house	20,000		
"	"	Sand-house	1,000		
"	"	Oil-house	2,000		
"	"	Water tank	500		
"	"	Coal platform	1,500		
"	"	Car-inspector's house	100		
"	"	Coal shed	50		
"	"	Supply-room	25		
"	"	Lumber shed	175		
"	"	Hose-reel house	50		
"	"	Casting-house	20		
"	"	Paint-supply house	30		
"	"	Coal bin	50		
"	"	Iron-supply house	15		
"	"	Reading-room	400		
"	"	Watch-house	20		
"	"	Coal-house	15		
"	E. of Indianapolis	Yard office	100		
"	"	Coke and coal bin	15		
"	Indianapolis	Ice-house	100		
"	"	Freight-house	15,000		
"	"	Freight-house	10,000		
"	"	Three watch-houses	45		
"	"	One watch-house	20		
"	"	Tool-house	25		
"	"	Yard office	150		
"	"	Watch-house	20		
"	"	Car-inspector's office	60		
"	"	Seven watch-houses	140		
"	"	Yardmaster's office	75		

Pittsburgh, Cincinnati, St. Louis & Chicago—Continued:

Center	Belt crossing	Telegraph office	$200	
"	"	Tool-house	100	
Warren	Cumberland	Station	450	
"	"	Tool-house	15	
"	Irvington	Station	400	
"	"	Tool-house	20	
				$109,385

535 Terre Haute & Indianapolis:

	Indianapolis	Inspector's house	$10	
	"	Office and freight-house	8,000	
	"	Two watch-houses	12	
	"	Yard office	800	
	"	Oil-house	30	
	"	Water tank	75	
	"	Carpenter shop	50	
	"	Wood shed	50	
	"	Coal shed	30	
	"	Sand-house	20	
	"	Blacksmith shop	425	
	"	Engine-house	6,000	
	"	Pump-house	60	
	"	Car and tool house	40	
Center	White River	Switch-house	10	
"	W. Indianapolis	Yard office	75	
"	"	Watch-house	10	
Wayne	Eagle Creek	Watch-house	10	
"	Bridgeport	Depot	70	
"	"	Hand-car house	10	
"	"	Section-house	75	
				$15,862
Total in Marion county				$837,847

Marshall county.

Baltimore & Ohio & Chicago:

German	Bremen	Depot	$600	
"	"	Water station	200	
"	"	Grain elevator	600	
"	"	Two hand-car houses	20	
"	"	Stock pens	10	
North	Lapaz	Passenger depot	200	
"	"	Two hand-car houses	20	
"	"	Stock pens	10	
"	Lapaz Jc.	Half passenger depot	150	
Polk	Teegarden	Passenger depot	150	
"	"	Hand-car house	10	
				$1,970

Lake Erie & Western:

Walnut	Walnut	Hand-car house	$10	
"	Argos	Station-house	250	
"	"	Hand-car house	10	
"	"	Water-closet	5	
Center	Plymouth	Station	350	
"	"	Hand-car house	15	
"	"	Water-closet	5	
				640

536 New York, Chicago & St. Louis:

Tippecanoe	Tippecanoe	Station	$300	
"	"	Tool-house	20	
"	"	Cattle pen	5	
"	"	Water tank	300	
"	"	Pump-house	40	

New York, Chicago & St. Louis—Continued:

Walnut	Argos	Tool-house	$20		
"	"	Watch-house	10		
"	"	Coal platform	145		
"	"	Station-house	300		
"	"	Tool-house	20		
"	"	Cattle pens	5		
Union	Burr Oak	Station-house	70		
"	"	Tool-house	20		
"	"	Cattle pens	5		
"	"	Tool-house	20		
					$1,280

Pittsburg, Ft. Wayne & Chicago:

Bourbon	Bourbon	Passenger and freight house	$1,000		
Center	Inwood	Passenger and freight house	500		
"	Plymouth	Passenger-house	2,600		
"	"	Freight-house	1,600		
"	"	Tank	400		
"	"	Frost-proof tub	300		
"	"	Tub	500		
"	"	Engine-house	350		
"	"	Blacksmith shop	400		
"	"	Turn-table	300		
					7,950

Terre Haute & Logansport:

Union	Marmont	Depot	$350		
"	"	Water tank	100		
"	"	Pump-house	15		
"	"	Water-closet	10		
"	"	Tool-house	10		
"	"	Dwelling	50		
"	Hibbard	Depot	100		
"	"	Tool-house	10		
"	"	Water-closet	5		
North	Lapaz Junct.	Depot	100		
"	"	Water-closet	5		
Center	Plymouth	Depot	250		
"	"	Supply-house	10		
					1,015
Total in Marshall county					$12,855

537 Martin county.

Evansville & Richmond:

Mitch'ltree	Indian Spr'gs	Water station	$100		
					$100

Ohio & Mississippi:

Halbert	Green Springs	Water stations	$300		
"	"	Section-house	45		
"	Willow Valley	Section-house	15		
"	Shoals	Depot	1,200		
"	"	Section-house	10		
Center	Harmony Springs	Water station	600		
"	Loogootee	Depot	150		
					2,320
Total in Martin county					$2,420

Miami county.

Eel River:

Jefferson	Denver	Station	$200		
"	"	Tank	300		
"	"	Hand-car house	10		
"	"	Coal-house	10		

Eel River—Continued:

Jefferson	Denver	Power-house	$200	
"	"	Elevator	800	
"	"	Hand-car house	40	
"	"	Office	40	
"	Mexico	Station	250	
"	"	Elevator	800	
"	"	Hand car	20	
Richland	Chili	Station	100	
"	"	Elevator	800	
"	"	Store-room	25	
"	"	Barn	20	
				$3,615

Lake Erie & Western:

Pipe Creek	Bunker Hill	Hand-car house	$10	
Deer Creek	Bennetts	Station	150	
"	"	Coal-house	10	
Peru	Peru	Freight-house	800	
"	"	Car shop	1,500	
"	"	Car-builders' shop	300	
"	"	Machine shop	1,800	
"	"	Machine shop	200	
"	"	Boiler-room	400	
"	"	Casting-house	250	
"	"	Molding shop	200	
Perú	"	Engine-room	350	
538 "	"	Oil-house	50	
"	"	Blacksmith shop	250	
Peru	"	Iron shed	50	
"	"	Oil-house	150	
"	"	Office	300	
"	"	Water-closet	10	
"	"	Engine-house	3,000	
"	"	Sand-house	50	
"	"	Repair shop	50	
"	"	Car-oiler's house	20	
"	"	Watch house	15	
"	"	Paint shop	400	
"	"	Ice and coal house	200	
"	"	Scrap shed	100	
"	"	Dry-house	150	
"	"	Coal-house	100	
"	"	Lumber shed	100	
"	"	Water-closet	10	
"	"	Tube shed	10	
"	"	Coal dock	250	
"	"	Hand-car house	10	
				$11,245

Pittsburg, Cincinnati, Chicago & St. Louis:

Jackson	Converse	Station	$550	
"	"	Tool-house	45	
"	Amboy	Station	500	
"	"	Water tank	450	
"	"	Pump-house	50	
Harrison	North Grove	Station	500	
"	"	Tool-house	50	
"	McGrawsville	Coal-house	10	
Pipe Creek	Bunker Hill	Station	550	
"	"	Tool-house	50	
"	"	Transfer-house	50	
"	"	Coal-house	10	
				2,815

Wabash:

Peru	Peru	Station	$900		
"	"	Baggage-room	100		
"	"	Elevator	2,500		
"	"	Corn-crib	200		
"	"	Engine-room	200		
"	"	Scale-house	75		
"	"	Freight-house	600		
"	"	Battery-house	25		
"	"	Hand-car house	20		
"	"	Target	10		
"	"	Storehouse	200		
"	"	Tank	500		
Peru	"	Coal-house	30		
539	"	Closet	10		
"	"	Oil-house	25		
Peru	"	Watch-house	25		
"	"	Offices	1,000		
"	"	Engine-house	3,500		
"	"	Store-room	300		
"	"	Yardmaster's office	20		
"	"	Car-repair house	25		
					$10,265
Total in Miami county					$27,940

Monroe county.

Louisville, New Albany & Chicago:

Clear Creek	Harrodsburg	Tank	$100		
"	"	Pump-house	50		
"	"	Depot	300		
Perry	Clear Creek	Tank	100		
"	"	Pump-house	50		
Bloomington	Bloomingt'n	Depot	1,500		
"	"	Turn-table	150		
Richland	Ellettsville	Tool-house	15		
"	"	Depot	300		
Bean Blossom	Stinesville	Tank	100		
"	"	Pump-house	50		
"	"	Tool-house	15		
"	"	Depot	100		
					$2,830
Total in Monroe county					$2,830

Montgomery county.

Louisville, New Albany & Chicago:

Clark	Ladoga	Tank	$100		
"	"	Pump-house	50		
Union	Crawfordsville	Depot	1,150		
"	"	Two watch-houses	30		
"	"	Tank	100		
Madison	Linden	Depot	200		
					$1,630

Midland:

Walnut	New Ross	Depot	$75		
Clark	Ladoga	Depot	50		
"	"	Tank	200		
"	"	Tool-house	10		
Brown	Waveland	Depot	150		
"	"	Engine shed	350		
"	"	Tank	200		
"	"	Tool-house	10		
					1,045

540	Peoria & Eastern—Western division:				
Walnut	New Ross		Depot	$300	
Union	Crawfordsville		Depot and tank	600	
"	"		Freight-house and shed	300	
Wayne	Waynetown		Depot and tank	350	
					$1,550
	Terre Haute & Logansport:				
Brown	Waveland		Tool-house	$10	
"	"		Tool-house	10	
"	Brown's Valley		Depot	40	
Union	New Market		Dwelling	100	
"	"		Water tank	65	
"	"		Pump-house	10	
"	"		Tool-house	10	
"	"		Depot	200	
"	Crawfordsville Jct.		Watch-house	5	
"	"		R. M. office	25	
"	"		Storehouse	25	
"	"		Pump-house	10	
"	Crawfordsville		Freight-house	75	
"	"		Tool-house	5	
Franklin	Darlington		Tool-house	5	
"	"		Depot	250	
Sugar Creek	Sugar Creek		Water tank	75	
"	"		Pump-house	10	
"	"		Sand-house	10	
Union	Crawfordsville		Depot	350	
"	"		Water tank	100	
					1,390
	Toledo, St. Louis & Kansas City:				
Madison	Kirkpatrick		Depot	$150	
Coal Creek	N. Richmond		Depot	150	
"	Wingate		Depot	150	
"	"		Tank	100	
					550
	Total in Montgomery county				$6,165
	Morgan county.				
	Fairland, Franklin & Martinsville:				
Jackson	Morgantown		Depot	$200	
"	"		Tool-house	10	
Washington	Martinsville		Depot	200	
"	"		Engine shed	50	
"	"		Tool-house	10	
"	Van Sickle		Water station	100	
					$570
541	Indianapolis & Vincennes:				
Brown	Mooresville		Station	$110	
"	W. of Mooresville		Water tank	100	
"	"		Pump-house	20	
Clay	Brooklyn		Station	150	
"	Bethany Park		Telegraph office	30	
"	"		Shelter shed	50	
"	Centreton		Station	140	
Washington	Martinsville		Station	200	
Jefferson	W. of Martinsville		Water tank	100	
"	"	"	Pump-house	20	
Ray	Paragon		Station	150	
					$1,070
	Total in Morgan county				$1,640

Newton county.

Chicago & Indiana Coal:

Jackson	Mt. Ayr	Station	$350	
"	"	Tool-house	10	
Iroquois	Julian	Station	350	
"	"	Tool-house	10	
"	Foresman	Station	350	
Grant	Goodland	Station	300	
"	"	Tool-house	10	
"	Percy Jct.	Tank	350	
"	"	Office	10	
Iroquois	Brook	Two hand-car houses	20	
"	"	Station	400	
"	"	Coal-house	10	
"	"	Privy	5	
"	"	Stock pen	80	
Beaver	Morocco	Station	400	
"	"	Coal-house	10	
"	"	Privy	5	
"	"	Stock pen	80	
"	"	Hand-car house	10	
"	Pogue	Stock pen	60	
"	"	Tank	350	
"	"	Pump-house	125	
Grant	Percy Jct.	Coal-house and crane	100	
				$3,395

Louisville, New Albany & Chicago:

Lincoln	Rose Lawn	Tool-house	$15	
"	"	Depot	300	
"	Thayer	Depot	150	
"	"	Tool-house	15	
				480

542 Pittsburgh, Cincinnati, Chicago & St. Louis:

Grant	Goodland	Station	$125	
"	"	Tool-house	45	
"	"	Water tank	500	
"	"	Pump-house	50	
"	"	Two coal-houses	30	
Jefferson	Kentland	Station	500	
"	"	Two tool-houses	95	
"	"	Coal-house	15	
"	Effner	Engine-house	1,200	
"	"	Station	150	
				$2,710

Total in Newton county $6,585

Noble county.

Baltimore & Ohio & Chicago:

Allen	Avilla	Grain elevator	$1,000	
"	"	Half passenger depot	300	
"	"	Half freight depot	150	
"	"	Two hand-car houses	20	
"	"	Stock pens	10	
Jefferson	"	Water station	800	
Albion	Albion	Grain elevator	1,000	
"	"	Passenger depot	250	
"	"	Two hand-car houses	20	
"	"	Stock pens	10	
York	"	Hand-car house	10	
Sparta	Cromwell	Grain elevator	1,000	
"	"	Passenger depot	250	
"	"	Water station	700	
"	"	Two hand-car houses	20	
"	"	Stock pens	10	
				$5,530

Eel River:

Swan	Potter's		Station	$100	
"	La Otto		Transfer-shed	50	
"	"		Hand-car house	20	
					$170

Grand Rapids & Indiana:

Swan	La Otto		Depot	$400	
"	"		Half transfer-house	25	
"	Swan		Depot	300	
Allen	Avilla		Depot	400	
"	"		Half transfer-house	150	
Wayne	Kendallville		Half passenger-house	800	
	Wayne	"	Freight-house	500	
543	Orange	Rome City	Passenger depot	1,600	
	"	"	Freight depot	400	
Orange		"	Ice-house	200	
"		"	Water tank	400	
"	Spring Beach		Passenger-house	200	
"	Wolcottville		Passenger-house	400	
"	"		Freight-house	100	
					5,875

Lake Shore & Michigan Southern:

Perry	Ligonier		Passenger-house		
"	"		Water closet		
"	"		Freight-house		
"	"		Grain-house	$5,500	
"	"		Pump-house		
"	"		Hand-car house		
"	"		Water tank		
Elkhart	Wawaka		Passenger-house		
"	"		Grain-house	600	
"	"		Hand-car house		
Orange	Brimfield		Passenger-house		
"	"		Freight-house	450	
"	"		Hand-car house		
Wayne	Kendallville		Passenger-house		
"	"		Freight-house		
"	"		Freight-house		
"	"		Freight office		
"	"		Trackmaster's office		
"	"		Engine-house	1,800	
"	"		Ice-house		
"	"		Interlocking tower		
"	"		Hand-car house		
"	"		Water tank		
"	"		Pump-house		
					8,350
Total in Noble county					$19,925

Ohio county.

No improvements.

Orange county.

Louisville, New Albany & Chicago:

North East	Lancaster		Tank and house	$50	
Orleans	Orleans		Tool-house	15	
"	"		Depot	1,000	
					$1,065

544 Orleans, West Baden & French Lick:

Orleans	Orleans		Tool-house	$10	
Paoli	Paoli		Tool house	10	
"	"		Depot	200	
"	"		Tank	20	

Orleans, West Baden & French Lick—Continued:

French Lick	Abbey Dell	Depot	$10		
"	Campbell's	Platform	5		
"	West Baden	Depot	1,000		
"	French Lick	Depot	1,000		
					$2,250
Total in Orange county					$3,220

Owen county.

Evansville & Indianapolis:

Jefferson	Coal City	Freight and passenger house	$135		
					$135

Indianapolis & Vincennes:

Wayne	Gosport	Station	$150		
Washington	Romona	Station	50		
"	Spencer	Passenger-house	800		
"	"	Freight-house	250		
"	"	Engine-house	50		
"	"	Storehouse	50		
"	"	Storehouse	80		
"	"	Water tank	200		
"	"	Pump-house	40		
Franklin	Freedom	Station	125		
					1,795

Louisville, New Albany & Chicago:

Wayne	Gosport	Depot	$2,000		
"	"	Tank	50		
Taylor	Quincy	Depot	200		
"	"	Tank	50		
"	"	Tool-house	15		
					2,356
Total in Owen county					$4,245

545 Parke county.

Chicago & Indiana Coal:

Liberty	Tangier	Station	$250		
"	"	Tool-house	10		
Reserve	West Union	Tank	350		
"	"	Station	250		
"	"	Tool-house	10		
Wabash	Mecca	Station	250		
"	"	Pump-house	125		
"	"	Tank and pump	400		
"	"	Tool-house	10		
Florida	Coxville	Station	200		
"	Rosedale	Station	250		
"	"	Tank-house	450		
"	"	Tool-house	10		
"	"	Stock pen	25		
					$2,590

Evansville, Terre Haute & Chicago:

Florida	Atherton	Depot	$200		
					200

Indianapolis, Decatur & Western:

Greene	Guion	Water tank	$200		
"	"	Station	150		
Washington	Marshall	Station	150		
Penn	Bloomingdale	Station	150		
Reserve	Montezuma	Station	200		
"	"	Carpenter shop	150		
"	"	Car shed	100		
"	"	Water tank	200		
					1,300

Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division:

Jackson	Lena	Hand-car house	$30	
"	"	Section-house	300	
				$330

Terre Haute & Logansport:

Florida	Rosedale	Depot	$375	
"	"	Warehouse	75	
"	"	Tool-house	5	
"	Jessup	Water tank	200	
"	"	Pump-house	15	
"	"	Coal-house	5	
"	"	Depot	15	
"	"	Tool-house	5	
Raccoon	Catlin	Depot	15	
546 Adams	Sand Creek	Depot	200	
"	"	Water tank	400	
Adams	"	Pump-house	10	
Washington	Judson	Depot	300	
"	"	Tool-house	5	
Green	Guion	Depot	25	
Adams	Rockville	Depot	600	
"	"	Freight-house	300	
"	"	Coal-house	40	
"	"	Tool-house	20	
				2,610
Total in Parke county				$7,030

Perry county.

Louisville, Evansville & St. Louis:

Troy	Troy	Pass. and freight house	$150	
"	Cannelton	Pass. and freight house	250	
"	"	Engine-house	200	
"	"	Water tank	150	
				$750
Total in Perry county				$750

Pike county.

Evansville & Indianapolis:

Patoka	Hosmer	Freight and passenger house	$35	
Logan	Hedden	Water station	75	
Washington	Petersburg	Freight and passenger house	150	
"	Rogers	Freight and passenger house	100	
"	"	Water station	20	
				$380

Louisville, Evansville & St. Louis:

Marion	Velpen	Passenger and freight-house	$220	
Patoka	Winslow	Passenger and freight house	220	
"	Ayrshire	Water tank	150	
"	Whitman	Station	200	
				790
Total in Pike county				$1,170

547 Porter county.

Baltimore & Ohio & Chicago:

Washington	Colewig	Office	$20	
"	"	Grain elevator	1,000	
"	"	Stock pens	10	

Baltimore & Ohio & Chicago—Continued:

Jackson	Sunman		Water station	$800	
"	"		Passenger station	120	
"	"		Hand-car house	10	
"	"		Stock pens	10	
Liberty	Woodville		Hand-car house	10	
Portage	McCools		Depot	100	
"	"		Hand-car house	10	
"	"		Interlocking tower	80	
					$2,170

Chicago & Erie:

Pleasant	Kouts	Passenger and freight house	$250	
Boone	State Ditch	Water tank and pump-house	400	
Porter	Boone Grove	Passenger and freight house	200	
"	Hulberts	Passenger and freight house	150	
				1,000

Chicago & Grand Trunk:

Center	Valparaiso	Pass. house and dining-room	$2,000	
"	"	Elevator	500	
"	"	Engine-house	600	
"	"	Freight-house	500	
"	"	Ice-house	200	
"	"	Two tool-houses	100	
"	"	Tools and spare gear	200	
"	"	Water tank, pump, etc.	1,000	
"	"	Carpenter shop	100	
"	Ft. Wayne Cross'g	Boarding-house	200	
"	"	Electric tower	2,000	
"	Sedley	Pass. and freight house	300	
"	"	Section-house	200	
				7,900

Chicago & Indiana Coal:

Pleasant	Burk's Siding	Stock pen	$40	
				40

Lake Shore & Michigan Southern:

Portage	Dune Park	Passenger-house	$400	
"	"	Hand-car house	20	
"	Baileytown	Dwelling	100	
"	"	Ice-house	100	
"	Porter	Interlocking tower	200	
548				
Westchester	Chesterton	Freight-house	$400	
"	"	Hand-car house	20	
"	"	Pump	50	
"	"	Water tank	200	
Jackson	Burdick	Telegraph office	50	
"	"	Passenger-house	50	
"	"	Freight-house	50	
Pine	New Burdick	Engine-house	200	
"	"	Dwelling	400	
"	"	Ice-house	50	
"	"	Water tank	300	
"	"	Windmill	50	
				$2,640

Michigan Central:

Portage	Christmans	Pass. house	$600	
"	"	Freight-house	80	
"	"	Coal bins	20	
West Chester	Porter Sta.	Target tender's house	40	
"	"	Target shed	10	
"	"	Pass. house and agent's residence	700	

Michigan Central—Continued:

West Chester	Porter Sta.	Freight-house	$125		
"	"	Two water tanks and pump	700		
"	"	Hand-car house	20		
"	Furnace Sta.	Pass. house and agent's residence	600		
"	"	Hand-car house	16		
					$2,910

New York, Chicago & St. Louis:

Center	Valparaiso	Station	$520		
"	"	Freight-house	330		
"	"	Tool-house	20		
"	"	Cattle pens	10		
"	"	Office	20		
"	"	Water tank	300		
Union	Wheeler	Station-house	70		
"	"	Tool-house	20		
					1,290

Pittsburg, Cincinnati, Chicago & St. Louis:

Pleasant	Kouts	Station	$600		
"	"	Pump-house	30		
"	"	Two tool-houses	80		
"	"	Water tank	450		
"	"	Coal-hoist	750		
Boone	Hebron	Passenger-house	100		
"	"	Freight-house	75		
"	"	Tool-house	40		
"	"	Coal-house	20		
					2,145

549 Pittsburgh, Ft. Wayne & Chicago:

	Valparaiso	Pass. house	$5,000		
	"	Freight-house	1,800		
	"	Sand-house	250		
	"	Tank	650		
	"	Two frost-proof tubs	600		
	"	Round-house	7,000		
	"	Blacksmith and carpenter shop	2,200		
	"	Telegraph tower	350		
Union	Wheeler	Station	200		
"	"	Hand-car house	150		
					18,200
Total in Porter county					$38,295

Posey county.

Evansville & Terre Haute:

Smith	Cynthiana	Freight and pass. house	$100		
Center	Wadesville	Freight and pass. house	100		
Robb	Poseyville	Freight and pass. house	100		
Black	Mt. Vernon	Freight and pass. house	1,200		
		Water station	150		
					$1,650

Louisville & Nashville:

Black	Mt. Vernon	Pass. house	$800		
		Tool-house	20		
		Water tank	100		
		Pump-house	100		
	Upton	Water tank	100		
		Section-house	150		
	Cobourn	Section-house	100		
					1,370

Peoria, Decatur & Evansville:

Bethel	Griffin	Freight and passenger house	$100		
Robb	Stuartsville	Freight and passenger house	100		
Harmony	New Harmony	Freight and passenger house	100		
"	"	Engine shed	25		
Robb	Poseyville	Freight and passenger house	100		
"	"	Water tank	50		
					$475
Total in Posey county					$3,495

550 Pulaski county.

Chicago & Erie:

Tippecanoe	Monterey	Water tank	$400		
		Pass. and freight house	200		
		Fuel station	200		
					$800

Louisville, New Albany & Chicago:

Salem	Francisville	Depot	$300		
White Post	Medaryville	Depot	200		
Cass		Tank	50		
					550

Pittsburg, Cincinnati, Chicago & St. Louis:

Van Buren	Star City	Station	$40		
"	"	Tool-house	40		
Monroe	Winamac	Freight-house	150		
"	"	Passenger-house	800		
"	"	Two tool-houses	80		
"	"	Water tank	500		
"	"	Pump-house	35		
"	"	Two coal-houses	65		
Rich Grove	Denham	Tool-house	50		
					1,760
Total in Pulaski county					$3,110

Putnam county.

Indianapolis, Decatur & Western:

Franklin	Roachdale	Station	$150		
"	Raccoon	Station	150		
"	"	Water tank	200		
Russell	Russellville	Station	150		
					$650

Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division:

Marion	Malta	Hand-car house	$30		
"	Darwin	Depot	10		
Greencastle	Greencastle	Depot	600		
"	"	Freight-house	250		
"	"	Hand-car houses (two)	60		
Madison	Fern	Water station	500		
"	"	Depot	150		
"	"	Section-house	120		
"	"	Hand-car house	30		
"	"	Section-house	75		
					1,825

551 Louisville, New Albany & Chicago:

Cloverdale	Cloverdale	Two tool-houses	$30		
"	"	Depot	200		
Warren	Putnamville	Depot	25		
"	Limestone	Tank and house	250		

Louisville, New Albany & Chicago—Continued:

Greencastle	Greenc'le Jc.	Fuel station	$200	
"	Greencastle	Watch-house	15	
"	"	Depot	1,000	
"	"	Turn-table	50	
"	"	Two water columns	200	
"	Walnut Creek	Tank	50	
Franklin	Roachdale	Tool-house	15	
Monroe	Bainbridge	Depot	200	
				$2,135

Terre Haute & Indianapolis:

Marion	Fillmore	Hand-car house	$20	
"	"	Depot	75	
"	"	Coal-house	15	
Greencastle	Greencastle	Hand-car house	10	
"	"	Coal shed	70	
"	"	Carpenter shop	50	
"	"	Water tank	100	
"	"	Water tank	75	
"	"	Depot	750	
"	"	Coal-house	10	
"	"	Hand-car house	10	
"	"	Dwelling	550	
"	Junction	Depot	175	
Washington	Reelsville	Depot	100	
"	"	Pump-house	50	
"	"	Two water tanks	100	
"	"	Hand-car house	10	
				2,170
Total in Putnam county				$6,780

Randolph county.

Cincinnati, Richmond & Ft. Wayne:

Franklin	Ridgeville	Half depot	$1,000	
"	"	Water tank	200	
White River	Winchester	Depot	400	
"	"	Half transfer-house	300	
Washington	Woods	Water tank	400	
"	Lynn	Depot	400	
				2,700

552 Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division:

Wayne	Union City	Passenger-house	$500	
"	"	Train dispatcher's office	300	
"	"	Hand-car house	30	
"	"	Round-house	300	
"	"	Water station	480	
"	"	Switch-house	30	
"	"	Shop	50	
"	Hanesville	Water station	300	
White River	Winchester	Pass. house and baggage-room	450	
"	"	Freight-house	200	
"	"	Hand-car houses (2)	60	
"	"	Target-house	75	
"	"	Water station	500	
"	White River	Water station	150	
Monroe	Farmland	Pass. and freight house	450	
"	"	Hand-car house	30	
"	Parker	Hand-car house	30	
				$3,935

Peoria & Eastern—Eastern division:

Grand Fork	Center		Depot	$200	
Washington	Lynn		Depot and tank	400	
West River	Carlos City		Depot	200	
"	Modoc		Depot	200	
Nettle Creek	Losantville		Depot	200	
					$1,200

Pittsburgh, Cincinnati, Chicago & St. Louis:

Wayne	Union City		Station	$50	
"	"		Storehouse	100	
"	"		Coal-house	20	
"	"		Tool-house	45	
"	Saratoga		Tool-house	40	
"	Deerfield		Two coal-houses	35	
"	"		Water tank	500	
"	"		Pump-house	60	
Franklin	Ridgeville		Half station	900	
"	"		Old station	90	
"	"		Coal-house	20	
"	"		Tool-house	45	
"	"		Half watch-house	5	
					1,910
			Total in Randolph county		$9,745

553 Ripley county.

Cleveland, Cincinnati, Chicago & St. Louis:

Adams	Sunmans		Depot	$200	
"	"		Water station	350	
"	"		Tool-house	10	
"	Boundary Line		Water station	50	
"	Spades		Depot	75	
"	Morris		Depot	200	
Laughery	Batesville		Depot	1,000	
"	"		Water station	350	
"	"		Tool-house	10	
					$2,245

Ohio & Mississippi:

Franklin	Milan		Depot	$120	
"	"		Water station	550	
"	"		Coal bins	1,000	
Center	Osgood		Depot	200	
Otter Creek	Holton		Depot	50	
"	"		Section-house	25	
					1,945
			Total in Ripley county		$4,190

Rush county.

Cincinnati, Wabash & Michigan:

Ripley	Carthage		Station	$250	
"	"		Water tank	200	
					$450

Cincinnati, Hamilton & Indianapolis:

Union	Glenwood		Passenger and freight depot	$700	
"	Griffin's		Passenger and freight depot	300	
Rushville	Rushville		Water station	500	
"	"		Passenger depot	500	
"	"		Freight depot	700	
Posey	Arlington		Hand-car house	25	
					2,725

Pittsburgh, Cincinnati, Chicago & St. Louis:

Walker	Manilla	Tool-house	$20		
Rushville	Rushville	Station	500		
"	"	Tool-house	10		
					$530

Fort Wayne, Cincinnati & Louisville:

Rushville	Rushville	Half passenger and freight station	$250		
"	"	Half water-tank	150		
"	"	Half engine-house	350		
Center	Hamiltons	Passenger and freight station	200		
					950

554 Vernon, Greensburg & Rushville:

Anderson	Williamstown	Tool-house	$10		
"	Milroy	Tool-house	10		
Rushville	Rushville	Half depot	250		
"	"	Half engine-house	250		
"	"	Water station	150		
"	"	Tool-house	10		
					680
Total in Rush county					$5,335

Scott county.

Ohio & Mississippi:

Johnson	Holman	Depot	$100		
"	"	Section-house	50		
Lexington	Lexington	Depot	175		
"	"	Section-house	50		
"	"	Water station	350		
					$725

Pittsburgh, Cincinnati, Chicago & St. Louis:

Vienna	Vienna	Station	$300		
"	Marshfield	Water tank	500		
"	"	Pump-house	50		
"	Scottsburg	Station	600		
"	"	Tool-house	10		
Jennings	Austin	Station	400		
"	"	Tool-house	10		
					1,870
Total in Scott county					$2,595

Shelby county.

Cincinnati, Hamilton & Indianapolis:

Hanover	Morristown	Pass. and freight depot	$350		
"	"	Water station	700		
Van Buren	Fountaintown	Hand-car house	25		
					$1,075

555 Cleveland, Cincinnati, Chicago & St. Louis—Chicago division:

Addison	Shelbyville	Passenger depot	$1,000		
"	"	Freight depot	300		
"	"	Tool-house	10		
Noble	St. Paul	Depot	200		
"	"	Tool-house	10		
Liberty	Waldron	Tool-house	10		
"	"	Depot	200		
"	"	Water station	150		
Brandywine	Fairland	Depot	200		
"	"	Tool-house	10		

Cleveland, Cincinnati, Chicago & St. Louis—Chicago division—Continued:

Moral	London	Depot	$100		
"	"	Tool-house	10		
"	Brooksfield	Water station	100		
Shelby	Prescott	Depot	100		
					$2,400

Pittsburgh, Cincinnati, Chicago & St. Louis:

Washington	Flat Rock	Station	$400		
Addison	Shelbyville	Station	1,200		
"	"	Water tank	400		
					2,000
Total in Shelby county					$5,475

Spencer county.

Louisville, Evansville & St. Louis:

Carter	Dale	Pass. and freight house	$100		
"	Lincoln	Water tank	150		
Jackson	Gentryville	Pass. and freight house	200		
Carter	Lincoln	Pass. and freight house	250		
Grass	Chrisney	Pass. and freight house	200		
Ohio	Rockport	Engine-house	50		
"	"	Water tank	50		
"	"	Passenger-house	25		
"	"	Freight-house	200		
					$1,225
Total in Spencer county					$1,225

Starke county.

Chicago & Erie:

North Bend	Ora	Pass. and freight house	$100		
Wayne	North Judson	Engine shed	400		
"	"	Pass and freight house	300		
Railroad	Kankakee	Water tank and pump-house	400		
"	Lomax	Depot	25		
					$1,225

556 Indiana, Illinois & Iowa:

Center	Knox	Depot	$350		
"	"	Tool-house	10		
"	"	Car-inspector's house	20		
"	"	Turn-table	125		
Wayne	North Judson	Half depot	150		
"	"	Coal sheds	150		
"	"	Tool-house	10		
"	"	Water tank	250		
"	"	Pump-house	100		
Railroad	San Pierre	Half depot	100		
"	"	Tool-house	10		
					1,275

Louisville, New Albany & Chicago:

Railroad	San Pierre	Half depot	$150		
"	"	Tank and tank-house	125		
					275

New York, Chicago & St. Louis:

Center	Jackson's Island	Tool-house	$20		
"	"	Section-house	150		
"	Knox	Cattle pens	5		
"	"	Station	300		
"	"	Freight-house	20		
"	"	Water tank	300		
"	"	Pump-house	40		
"	"	Two tool-houses	40		
					875

Pittsburg, Cincinnati, Chicago & St. Louis:

Wayne	North Judson	Station	$600		
"	"	Tool-house	40		
"	"	Car-repairer's house	10		
"	"	Coal-house	25		
Railroad	English Lake	Station	400		
"	"	Tool-house	40		
"	"	Pump-house	35		
"	"	Water tank	450		
					$1,600

Pittsburgh, Ft. Wayne & Chicago:

Oregon	Grovertown	Hand-car house	$150	
Davis	Hamlet	Section-house	150	
"	"	Pass. and freight house	500	
"	Davis	Pumping-house	325	
"	"	Frost-proof tub	500	
				1,625
Total in Starke county				$6,875

557 Steuben county.

Ft. Wayne & Jackson:

Fremont		Pass. and hand-car house	$500	
Angola		Passenger-house	1,200	
"		Grain-house		
"		Round-house		
"		Hand-car house		
"		Track-supply house		
Pleasant Lake		Passenger-house	700	
"		Pump-house		
"		Coal shed		
"		Hand-car house		
				$2,400
Total in Steuben county				$2,400

St. Joseph county.

Baltimore & Ohio & Chicago:

Lincoln	Walkerton	Coal chutes	$1,000	
"	"	Passenger depot	300	
"	"	Freight depot	125	
"	"	Water station	700	
"	"	Two hand-car houses	20	
"	"	Target-house	10	
				2,155

Chicago & Grand Trunk:

Harris	Grangers	Pass. and freight house	$200	
"	Meshawaka	Freight-house	600	
"	"	Passenger-house	500	
"	"	Tool-house	25	
Portage	South Bend	Passenger-house	3,500	
"	"	Freight-house	3,500	
"	"	Two tool-houses	50	
"	Olivers	Water tank	500	
"	"	Telegraph office	75	
Warren	Crums Point	Freight and passenger house	25	
"	"	Tool-house	25	
				9,000

Cincinnati, Wabash & Michigan:

Harris	Granger	Station ($\frac{1}{2}$)	$100	
				100

Indiana & Lake Michigan:

Portage			Tool-house	$10	
Warren			Tool-house	10	
Olive			Tool-house	10	
					$30

Lake Erie & Western:

Lincoln	Walkerton		Hand-car house	$10	
					10

558 Lake Shore & Michigan Southern:

Olive	New Carlisle		Grain-house & hand-car house	$500	
"	Terre Coupee		Grain-house	700	
"	"		Pump-house		
"	"		Dwelling		
Warren	Warren		Pass. house	700	
"	"		Freight-house		
"	"		Dwelling		
"	"		Hand-car house		
"	"		Interlocking tower		
Portage	South Bend		Pass. house	10,000	
"	"		Water-closet		
"	"		Engine-house		
"	"		Freight-house		
"	"		Freight-house		
"	"		Coal-house		
"	"		Interlocking tower		
"	"		Hand-car house		
"	"		Water tank		
Penn	Mishawaka		Passenger-house	1,300	
"	"		Baggage-room		
"	"		Water-closet		
"	"		Freight-house		
"	"		Freight-house		
"	"		Hand-car house		
"	Osceola		Passenger and freight house	450	
"	"		Telegraph office		
"	"		Hand-car house		
					13,650

Michigan Air Line:

Portage	St. Marys		Pass. and freight house	$50	
Clay	South Bend		Pass. house	1,000	
"	"		Freight-house	1,000	
"	"		Old freight-house	500	
					2,550

Terre Haute & Logansport:

Union	Lakeville		Depot	$200	
"	"		Engine-house	350	
"	"		Supply-house	40	
"	"		Water tank	100	
"	"		Oil-house	10	
Portage	South Bend		Depot	100	
"	"		Freight-house	75	
"	"		Water-closet	10	
"	"		Freight shed	25	
"	"		Tool-house	5	
					915
Total in St. Joseph county					$28,410

559 Sullivan county.

Evansville & Terre Haute:

Haddon	Carlisle		Freight and pass. house	$100	
"	Paxton		Freight and pass. house	75	
"	"		Water station	200	

Evansville & Terre Haute—Continued:

Hamilton	Sullivan	Pass. house	$1,200		
"	"	Freight-house	200		
Curry	Shelburn	Freight and pass. house	100		
"	Farmersburg	Freight and pass. house	100		
Jackson	New Pittsburg	Freight and pass. house	150		
"	Hymera	Water station	100		
					$2,025

Indiana & Illinois Southern:

Hamilton		Water tank	$25		
					25
Total in Sullivan county					$2,050

Switzerland county.

No improvements.

Tippecanoe county.

Cleveland, Cincinnati, Chicago & St. Louis—Chicago div.:

Fairfield	Lafayette Jct.	Half hotel and depot	$3,000		
"	Lafayette	Depot	2,000		
"	"	Engine-house and turn-table	1,500		
"	"	Oil-house	15		
"	"	Water station	300		
"	"	Tool-house	10		
Lauramie	Clark's Hill	Half depot and interlocking cabin	150		
"	Stockwell	Water station	150		
"	"	Tool-house	10		
"	"	Depot	400		
					$7,535

Lake Erie & Western:

Sheffield	Dayton	Pass. and freight station	$200		
Fairfield	Lafayette	Telegraph office	2,000		
"	"	Half passenger station	1,500		
"	"	Round-house	1,500		
"	"	Yardmaster's office	10		
"	"	Coal-house	300		
"	"	Coach-house	100		
"	"	Machine shop and engine-house	500		
"	"	Water tank	250		
"	"	Blacksmith shop	200		
"	"	Hand-car house	50		
"	"	Two guard-houses	15		
Shelby	Montmorenci	Pass. and freight station	150		
"	"	Water tank	100		
					6,875

560 Louisville, New Albany & Chicago:

Randolph	Corwin	Tank and pump-house	$150		
"	"	Depot	150		
Union	Taylor's	Section-house	250		
"	"	Tool-house	15		
Langley Res'o'r	Wabash R'y	Watch-house	10		
	Battle Ground	Depot	200		
Fairfield	Lafayette	Depot	5,000		
"	"	Elevator	100		
"	"	Tank	100		
"	"	Machine shop	310		
"	"	Smith shop	75		
"	"	Turn-table	200		
"	"	Engine-house	300		
"	"	Sand-house	20		
"	"	Tool-house	15		
"	"	Watch-house	10		
					$6,905

Toledo, St. Louis & Kansas City:

Lauramie	Clark's Hill		One-half depot	$150	
					$150

Wabash:

Washington	Colburn		Station	$150	
"	"		Coal-house	20	
"	"		Tank	400	
"	"		Power-house	320	
"	"		Coal-house	20	
"	Buck Creek		Station	300	
"	"		Hand-car house	20	
"	"		Forty coal chutes	1,500	
"	"		Sand-house	20	
"	"		Closet	5	
"	"		Coal bin	150	
Union	Shadeland		Elevator	1,500	
"	"		Engine-room	400	
"	"		Corn-crib	200	
"	"		Cob. house	75	
"	"		Dust-house	40	
"	"		Scale-house	100	
"	Wea		Station	100	
"	"		Tank	300	
"	"		Power-house	200	
"	"		Coal-house	10	
"	Lafayette		Station	6,000	
"	"		Baggage-house	1,500	
"	"		Closet	100	
"	"		Freight-house	3,000	
"	"		Freight office	1,500	
"	"		Office	1,000	
"	"		Elevator	2,500	
561					
"	"		Corn-crib	400	
"	"		Engine-house	200	
"	"		Scale-house	40	
"	"		Engine-house	600	
"	"		Hand-car house	20	
"	"		Watch-house	20	
"	"		Yard office	20	
"	"		Ice-house	150	
"	"		Oil-house	75	
"	"		Lumber shed	50	
"	"		Tank	400	
"	"		Car-repair shop	100	
"	"		Oil-house	25	
"	"		Coal dock	100	
"	"		Closet	10	
"	"		Hand-car house	15	
"	"		Five watch-houses	50	
"	Lafayette Jct.		Station	2,000	
"	"		Hotel	2,000	
"	"		Hotel	2,500	
"	"		Wood shed	50	
"	"		Kitchen	40	
"	"		Ice-house	50	
"	"		Closet	20	
"	"		Barn	40	
"	"		Coal-house	25	
					$30,430
Total in Tippecanoe county					$51,895

Tipton county.

Lake Erie & Western:

Jefferson	Goldsmith	Passenger and freight house	$140		
"	"	Coal-house	10		
"	Kempton	Passenger and freight house	150		
"	Tipton	Coal-house	10		
"	"	Passenger and freight station	390		
"	"	Freight-house	100		
"	"	Water tank	200		
"	"	Passenger and freight station	200		
"	"	Freight-house	200		
"	"	Power-house	20		
"	"	Hand-car house	10		
"	"	Office and shop building	200		
Liberty	Sharpsville	Passenger and freight station	300		
"	"	Coal-house	5		
"	"	Hand-car house	10		
					$1,945

562 Pittsburg, Cincinnati, Chicago & St. Louis:

Madison	Curtisville	Water tank	$150		
"	"	Pump-house	40		
					190
Total in Tipton county					$2,135

Union county.

Cincinnati, Hamilton & Indianapolis:

Union	College Corner	Passenger and freight depot	$500		
"	"	Water station	500		
Center	Hannah Creek	Watch-house	200		
"	Liberty	Depot	2,000		
Brownsville	Brownsville	Coal-house	10		
"	"	Watch-house	10		
"	"	Hand-car house	25		
Center	Silver Creek	Watch-house	150		
"	"	Water station	200		
Union	Bridge 11	Watch-house	100		
					$3,695
Total in Union county					$3,695

Vanderburgh county.

Evansville & Terre Haute:

Scott	Stacer	Passenger-house	$50		
Pigeon	Evansville	Passenger-house	8,000		
"	"	Freight-house	6,000		
"	"	Round-house	5,000		
"	"	Smith shop	1,200		
"	"	Car shop	1,500		
"	"	Storehouse	1,500		
"	"	Paint shops	1,000		
"	"	Warehouse	500		
"	"	Machine shops	2,000		
"	"	Water tank	500		
"	"	Stationery store-room	1,000		
					$28,250

Evansville, Suburban & Newburgh:

Pigeon	Evansville	Water station	$300		
Knight	Oak Hill	Shed	100		
"	Gilbert's Grove	Shed	100		
					500

563 Louisville, Evansville & St. Louis:

Pigeon	Evansville	Machine shops	$3,000	
"	"	Passenger-house	700	
"	"	Freight-house	500	
				$4,200

Louisville & Nashville:

Pigeon	Evansville	Freight-house	$1,500	
"	"	Freight-house	3,000	
"	"	Freight-house	4,000	
"	"	Passenger-house	1,000	
"	"	Baggage-room	50	
"	"	Switch-house	40	
"	"	Tool-house	25	
"	"	Oil-house	400	
Perry		Tool-house	40	
"		Pile-driver house	25	
"		Round-house	10,000	
"		Sand-house	400	
"		Machine shops	10,000	
"		Eng. house and mach. shop	5,000	
"		Smith and boiler shop	13,000	
"		Planing mill	10,000	
"		Engine-house for planing mill	5,000	
"		Freight-car shop	10,000	
"		Drying-house	4,000	
"		Traverse table	2,000	
"		Privy	200	
"		Water station	4,000	
"		Telegraph office	100	
"		Office and store-room	10,000	
"		Machinery and buildings	25,000	
				118,780

Peoria, Decatur & Evansville:

Armstrong	Armstrong	Freight and passenger house	$500	
Pigeon	Evansville	Passenger depot	2,000	
"	"	Freight depot	1,500	
"	"	Car shops	3,000	
"	"	Machine shops	3,000	
				10,000

Henderson Bridge Company:

Perry	Howell	Telegraph office	$40	
Union	"	Watch-house	10	
				50
Total in Vanderburgh county				$161,780

564 Vermillion county.

Evansville, Terre Haute & Chicago:

Highland	Gessie	Depot	$150	
"	Perrysville	Depot	200	
Eugene	Cayuga	Half depot	200	
"	"	Water tank and pump-house	300	
Vermillion	Newport	Depot	500	
Helt	Highland	Depot	75	
"	Hillsdale	Depot	200	
"	Summit Grove	Depot	150	
Clinton	Clinton	Depot	350	
"	"	Water tank	200	
"	"	Pump-house	100	
				2,425

Indianapolis, Decatur & Western:

Helt	Hillsdale	Station	$500	
"	Dana	Station	600	
				$1,100

Toledo, St. Louis & Kansas City:

Eugene	Cayuga	Half depot	$350	
"	"	Tank	200	
				550
Total in Vermillion county				$4,075

Vigo county.

Chicago & Indiana Coal:

Nevins	Coal Bluff	Signal-house	$100	
"	"	Tool-house	20	
				$120

Evansville & Indianapolis:

Riley	Riley	Pass. house	$135	
				135

Evansville & Terre Haute & Chicago:

	Terre Haute	Round-house	$3,000	
	"	Car and machine shops	3,000	
	"	Water tank	100	
	"	Telegraph office	100	
	"	Coal chutes	400	
	"	Coal office	15	
				6,615

565 Evansville & Terre Haute:

Linton	Pimento	Freight and pass. house	$100	
"	Near Pimento	Water station	100	
	Terre Haute	Freight-house	1,000	
	"	Yard office	50	
	"	Tool-house	50	
	"	Coach-house	200	
				1,500

Indiana Block Coal:

Otter Creek	Foley's Mine	Coal dump	$100	
				100

Terre Haute & Indianapolis:

Lost Creek	Seelyville	Depot	$275	
"	"	Section-house	100	
"	"	Hand-car house	15	
"	Glendale	Passenger shed	40	
"	Terre Haute	E. yard office	75	
"	"	Check office	10	
"	"	Coach-house	2,250	
"	"	Paint shop	1,100	
"	"	Coach shop	475	
"	"	Repair shop	2,750	
"	"	Car shop	175	
"	"	Dry-house	175	
"	"	Office	325	
"	"	Carpenter shop	3,400	
"	"	Blacksmith shop	1,400	
"	"	Coal sheds	125	
"	"	Wood shed	75	
"	"	Boiler shop	1,000	
"	"	Machine shop	2,200	
"	"	Engine repair shop	1,500	
"	"	Storehouse and office	1,400	
"	"	Engine-house	5,000	
"	"	Depot	2,500	

Terre Haute & Indianapolis—Continued:

Lost Creek	Terre Haute	Baggage-room	$75	
"	"	Mail-room	50	
"	"	Ice-house	20	
"	"	Freight-house and office	3,250	
"	"	Switch-house	10	
"	"	Line repairer's office	25	
"	"	Oil-room	175	
"	"	Tool-house	10	
"	"	Hand-car house	10	
"	"	Two watch-houses	15	
"	"	Four watch-houses	20	
"	"	Six watch-houses	30	
"	"	Bridge	5	
"	"	Tool-house	10	
				$30,070

566 Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division:

Nevins	Coal Bluff	Depot	$300	
"	Fontanet	Coal chutes	1,000	
"	"	Water station	350	
Otter Creek	Grant	Section-house	120	
"	"	Telegraph office	5	
"	"	Hand-car house	30	
	Terre Haute	Hand-car house	30	
	"	Third-street watch-house	15	
	"	Sand-house	50	
	"	Round-house	1,800	
	"	Freight-house	600	
	"	Depot	1,500	
	"	Pump-repair house	10	
	"	Section-house	180	
	"	Hand-car house	30	
	"	Freight-house	3,000	
	"	Water station, four watch-houses, and office	1,055	
Sugar Creek	St. Mary's	Section-house	60	
"	"	Hand-car house	30	
Fayette	Sandford	Water station	1,000	
	"	Passenger and freight house	400	
	"	Section-house	100	
	"	Hand-car house	30	
				$11,695
Total in Vigo county				$50,235

Wabash county.

Chicago & Erie:

Chester	Servia	Passenger and freight house	$200	
"	Bolivar	Half station	100	
Pleasant	Disko	Passenger and freight house	200	
"	"	Tank and pump house	400	
"	Laketon	Passenger and freight house	200	
"	Newton	Half tank and pump house	200	
"	"	Half station	150	
"	"	Half engine-house	1,500	
				$2,950

Cincinnati, Wabash & Michigan:

Chester	N. Manchester	Station	$200	
"	"	Water tank	200	
"	Bolivar	Half station	75	
Noble	Wabash	Station	200	
"	"	Station	200	
"	"	Repair shops	5,600	
Liberty	Lafontaine	Station	200	
"	Treaty	Station	200	
				6,875

567 Eel River:

Pawpaw	Roan	Station	$150		
"	"	Hand-car house	15		
Pleasant	Laketon Jct.	Station	400		
"	"	Engine-house	500		
"	"	Sand-house	10		
"	"	Oil-house	25		
"	"	Hand-car house	20		
"	Laketon	Station	150		
"	"	Hand-car house	10		
Chester	N. Manchester	Station	200		
"	"	Freight-house	150		
"	"	Elevator	800		
"	"	Corn-crib	25		
"	"	Corn-crib	75		
"	"	Hand-car house	20		
"	"	Target-house	10		
Chester	Liberty Mills	Station	200		
"	"	Tank	200		
"	"	Power-house	50		
"	"	Elevator	800		
"	"	Coal-house	25		
					$3,835

Wabash:

Lagro	Lagro	Station	$500		
"	"	Elevator	1,500		
"	"	Corn-crib	500		
"	"	Scale-house	150		
"	"	Hand-car house	200		
Noble	Wabash	Station	1,000		
"	"	Freight-house	500		
"	"	Baggage-house	75		
"	"	Elevator	2,500		
"	"	Corn-crib	100		
"	"	Engine-room	150		
"	"	Hand-car house	20		
"	"	Closet	25		
"	"	Coal-house	20		
"	Keller's	Station	200		
"	"	Tank	400		
"	"	Power-house	50		
"	"	Hand-car house	50		
					7,940
Total in Wabash county					$21,600

568 Warren county.

Chicago & Indiana Coal:

J. Q. Adams	Pine Village	Station	$150		
"	"	Tool-house	10		
Warren	Winthrop	Station	100		
"	"	Tool-house	10		
"	Kickapoo	Tool-house	10		
					$280

Rantoul:

Pike	West Lebanon	Tank	$100		
"	"	Windmill	40		
"	"	Four-tenths of station	320		
"	"	Engine-house	200		
"	"	Turn-table	100		
					760

Wabash:

Washingt'n	Williamsp't	Station, baggage-room, closet	$300	
"	"	Freight-house	200	
Pike	W. Lebanon	Station	300	
"	"	Hand car and coal house	40	
Steuben	Marshfield	Station	300	
"	"	Coal-house	20	
"	"	Hand-car house	20	
"	Sumner	Station	20	
"	"	Tank	400	
"	"	Power-house	30	
Kent	State Line	Station	400	
"	"	Hand-car house	20	
				$2,050
Total in Warren county				$3,090

Warrick county.

Evansville & Indianapolis:

Greer	Elberfield	Freight and passenger house	$50	
"	Near Elberfield	Water station	75	
				$125

Louisville, Evansville & St. Louis:

Skeleton	Tennison	Passenger and freight depot	$150	
"	De Gonia	Passenger and freight depot	75	
Boone	Boonville	Passenger and freight depot	400	
"	De Forrest	Tank	100	
Ohio	Chandler	Passenger and freight house	50	
				775
Total in Warrick county				$900

569

Washington county.

Louisville, New Albany & Chicago:

Pierce	Pekin	Tool-house	$15	
"	Farabee	Tool-house	15	
Washington	Harristown	Tank and pump house	150	
"	"	Depot	100	
"	Hitchcocks	Tool-house	15	
"	Salem	Tank and pump house	150	
"	"	Tool-house	15	
"	"	Depot	400	
Brown	Campbellsburg	Tool-house	15	
				$875
Total in Washington county				$875

Wayne county.

Cincinnati, Richmond & Ft. Wayne:

New Garden	Fountain City	Depot	$200	
"	"	Water tank	300	
"	Parry	Coal docks	300	
				$800

Ft. Wayne, Cincinnati & Louisville:

Washington	Milton	Passenger and freight station	$100	
Jackson	Cambridge City	Half passenger-house	800	
"	"	Freight-house	50	
				950

Cleveland, Cincinnati, Chicago & St. Louis—Whitewater division:

Jefferson	Hagerstown	Depot	$300	
Jackson	Cambridge City	Baggage-room	450	
Washington	Beesons	Water tank	250	
				$1,000

Pittsburgh, Cincinnati, Chicago & St. Louis:

Wayne	Cin. Div. Jct.	Signal tower	$200	
"	Richmond	Passenger-house	18,000	
"	"	Freight house	5,000	
"	"	Machine shop	9,000	
"	"	Watch-house	190	
"	"	Five watch-houses	90	
"	"	Tool-house	10	
"	"	Telegraph office	90	
	"	Supply-house	160	
570 Wayne	"	Interlocking tower	250	
"	"	Lamp-room	45	
Wayne	"	Water tank	500	
"	"	Storehouse	45	
"	"	Storehouse	60	
"	"	Freight-house	2,500	
Centre	Centreville	Station-house	1,000	
"	"	Tool-house	25	
"	"	Watch-house	20	
Jackson	Germantown	Station	200	
"	"	Tool-house	40	
"	Cambridge City	One-half passenger-house	500	
"	"	Tool-house	20	
"	"	Engine-house	600	
"	"	Tool-house	30	
"	"	Water tank	400	
"	"	Pump-house	100	
"	"	Storehouse	50	
"	"	Freight-house	1,000	
"	Dublin	Station	300	
Clay	Green's Fork	One-half station	100	
Jefferson	Hagerstown	One-half station	150	
"	"	Pump-house	50	
"	"	Water tank	500	
				$41,225
Total in Wayne county				$43,975

Wells county.

Chicago & Erie:

Jefferson	Kingsland	Pass. and freight house	$200	
"	Tocsin	Frame station	100	
Union	Uniondale	Pass. and freight house	200	
"	"	Water tank and pump-house	250	
				$750

Ft. Wayne, Cincinnati & Louisville:

Liberty	Poneto	Pass. and freight station	$150	
Harrison	Bluffton	Pass. house and office	400	
"	"	Freight-house and elevator	500	
"	"	Water tank	200	
Lancaster	Kingsland	One-half passenger and freight station	150	
Jefferson	Ossian	Pass. and freight station	200	
"	"	Water tank	250	
				1,800

571 Toledo, St. Louis & Kansas City:

Lancaster	Craigsville	Depot	$125	
"	N. Bluffton	Tank	150	
"	"	Storehouse	50	
Harrison	Bluffton	Depot	200	
Liberty	Liberty Center	Depot	100	
				$625
Total in Wells county				$3,175

White county.

Louisville, New Albany & Chicago:

Prairie	Carrs	Tank and pump-house	$150	
"	Brookston	Depot	300	
"	"	Tool-house	5	
Big Creek	Chalmers	Depot	200	
"	"	Tool-house	10	
"	Reynolds	Tool-house	10	
Honey Creek	Guernsey	Depot	150	
Union	Monticello	Depot	200	
"	"	Two tool-houses	30	
Monon	"	Engine-house	3,000	
"	"	Turn-table	100	
"	"	Two tool-houses	30	
"	"	Fuel station	200	
"	Monon	Passenger depot	1,000	
"	"	Freight depot	500	
"	"	Car repairer's house	50	
"	"	Roadmaster's house	100	
"	"	Two tool-houses	30	
"	"	Two tanks	200	
"	"	Pump-house	50	
				$6,315

Pittsburgh, Cincinnati, Chicago & St. Louis:

Jackson	Idaville	Tool-house	$45	
"	"	Coal-house	15	
Union	Monticello	Station	250	
"	"	Water tank	100	
"	"	Pump-house	50	
"	"	Tool-house	50	
"	"	Coal-house	15	
"	"	Supervisor's office	30	
"	W. of Monticello	Tool-house	45	
Honey Creek	Reynolds	Station	550	
"	"	Tool-house	50	
Princeton	Walcott	Station	100	
"	"	Pump-house	50	
"	"	Water tank	500	
				1,850
Total in White county				$8,165

572 Whitley county.

Eel River:

Cleveland	South Whitley	Station	$150	
"	"	Elevator	800	
"	"	Watch-house	25	
"	"	Power-house	75	
"	"	Office	25	
"	"	Hand-car house	20	
Columbia	Columbia City	Station	250	
"	"	Freight-house	200	
"	"	Elevator	800	

Eel River—Continued:

Columbia	Columbia City	Corn-crib	$25		
"	"	Office	20		
"	"	Barn	25		
"	"	Coal-house	20		
"	"	Hand-car house	20		
"	"	Tank	200		
"	"	Power-house	50		
"	"	R. M. office	150		
"	"	Watch-house	10		
Smith	Cherubusco	Station	200		
"	"	Elevator	800		
"	"	Hand-car house	20		
"	"	Tank	175		
"	"	Power-house	50		
					$4,110

New York, Chicago & St. Louis:

Washington	Peabody	Tool-house	$20		
"	Arnolds	Tool-house	20		
"	"	Telegraph office	15		
"	"	Section-house	150		
"	"	Water tank	300		
"	"	Pump-house	40		
Cleveland	"	Tool-house	20		
"	South Whitley	Watch-house	10		
"	"	Station	350		
					925

Pittsburgh, Ft. Wayne & Chicago:

Union	Coesse	Pass. and freight house	$500		
"	Columbia City	Freight-house	450		
"	"	Passenger-house	1,000		
"	"	Interlocking tower	350		
"	"	Two frost-proof tubs	600		
"	"	Hand-car house	150		
"	"	Old tank-house	400		
Richland	Larwill	Pass. and freight house	500		
					3,950
Total in Whitley county					$8,985

TABLE No. 3.

Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indianapolis for the Year 1891, as Valued and Equalized by the State Board of Tax Commissioners.

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles	Per mile.	Total.	Miles.	Per mile	Total.	Miles.	Per mile.	Total.			
Attica, Covington & Southern	14.47	$6,700	$96,949				1.11	$1,500	$1,665	14.47	$2,900	$41,963	$250	$104,827	$9,732
Baltimore, Ohio & Chicago	146.35	26,100	3,819,735	11.23	$8,000	$89,840	34.02	3,500	119,070	146 35	3,500	512,225	69,025	4,609,895	31,499
Bedford & Bloomfield	41.36	5,900	244,024				5.76	1,000	5,760	41 36	1,000	41,360	770	291,914	7,057
Belt	9.55	150,000	1,432,500	9.39	100,000	939,000	5.96	80,000	476,800	9.55	6,000	57,300	4,400	2,910,000	304,712
Cairo, Vincennes & Chicago	6.85	12,000	82,200				.08	3,000	240					82,440	12,035
Chicago & Erie	159.76	29,600	4,728,896				54.87	5,000	274,350	159.76	3,500	559,160	48,725	5,611,131	35,122
Chicago & Calumet Terminal	7.20	4,200	30,240				11.17	3,000	33,510	7.20	1,200	8,640	2,500	74,890	10,401
Chicago & Indiana Coal	164.59	20,000	3,291,800				50.14	3,000	150,420	164.59	6,000	987,540	21,505	4,451,355	27,045
Chicago & Grand Trunk	80.48	32,100	3,583,408				17.26	4,500	77,670	80.48	4,500	362,160	21,750	3,044,988	37,835
Chicago & West Michigan	34.46	9,500	327,370				4 40	2,000	8,800	34.46	2,000	68,920	5,590	410,680	11,918
Cincinnati, Hamilton & Indianapolis	78.26	31,200	2,441,712				16.40	5,000	82,000	78.26	2,500	195,650	21,020	2,740,382	35,016
Cincinnati, Lafayette & Chicago	23.75	31,900	757,625				4.22	4,000	16,880	23.75	4,500	106,875	1,705	883,085	37,140
Cincinnati, Richmond & Ft. Wayne	85.77	18,000	1,543,860				12.74	4,000	50,960	85.77	3,000	257,310	9,175	1,861,305	21,701
Cincinnati & Southern Ohio River	3.69	4,750	17,527				1.11	2,000	2,220	3.69	4,500	16,605	500	36,852	9,986
Cincinnati, Wabash & Michigan	168.57	7,700	1,297,989				29.72	3,000	89,160	168.57	2,500	421,425	14,775	1,823,349	10,816
Cleveland, Cincinnati, Chicago & St. Louis—															
Indianapolis division	83.84	27,900	2,339,136	2.44	8,000	19,520	39.05	4,000	156,200	83.84	4,500	377,280	105,920	2,998,056	35,759
St. Louis division	80.47	28,700	2,309,489				31.08	4,000	124,320	80.47	4,500	362,115	18,755	2,814,679	34,978
Chicago division	156.81	28,100	4,406,361				59.82	4,000	239,280	156.81	4,500	705,645	35,935	5,387,221	34,356
White Water division	62.25	4,300	267,675				2.56	2,500	6,400	62.25	4,500	280,125	4,350	558,550	8,972
Lawrenceburgh branch	2.91	5,000	14,550				3.71	2,000	7,420	2.91	4,500	13,095	1,510	36,575	12,568
Harrison branch	.81	5,500	4,455				1.03	2,000	2,060	.81	4,500	3,645		10,160	12,543
Columbus, Hope & Greensburg	24.28	11,400	276,792				4.24	2,000	8,480	24.28	4,500	109,260	955	395,487	16,288
Eel River	98.92	13,100	1,295,852				20.82	3,000	62,460	98.92	2,900	286,868	22,605	1,667,785	16,859
Elgin, Joliet & Eastern	21.20	19,600	415,520				4.43	3,500	15,505	21.20	2,000	42,400	3,505	476,930	22,496
Evansville Belt	4.45	13,000	57,850				3.60	6,000	21,600					79,450	17,853
Evansville & Indianapolis	135.48	11,800	1,598,664				21.85	2,000	43,700	135.48	500	67,740	3,150	1,713,254	12,645
Evansville & Richmond	101.40	10,100	1,024,140				5.40	3,000	16,200				2,025	1,042,365	10,279
574 Evansville, Suburban & Newburg	10.90	9,990	107,910				.87	2,500	2,175	10.90	4,000	43,600	500	154,185	14,145
Evansville & Terre Haute	160.74	16,400	2,636,136				40.54	3,500	141,890	160.74	6,500	1,044,810	48,100	3,870,936	24,081
Evansville, Terre Haute & Chicago	43.17	18,000	777,060				21.14	3,500	73,990	43.17	6,000	259,020	9,240	1,119,310	25,949
Fairland, Franklin & Martinsville	38.23	6,400	244,672				5.41	2,000	10,820	38.23	4,500	172,035	890	428,417	11,206
Ft. Wayne, Cincinnati & Louisville	128.63	15,300	1,968,039				18.70	3,000	56,100	128.63	1,600	205,808	16,800	2,246,747	17,466

Table No. 3—Continued.

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Ft. Wayne & Jackson	53.29	$14,800	$788,692				7.69	$3,000	$23,070	53.29	$5,500	$293,095	$9,300	$1,114,157	$20,907
Grand Rapids & Indiana	53.11	15,600	828,516				5.43	3,500	19,005	53.11	3,000	159,330	9,475	1,016,326	19,136
Henderson Bridge Company	9.46	66,000	624,360				.65	5,000	3,250				50	627,660	66,348
Indiana Block Coal	12.72	5,700	72,504				2.68	2,500	6,700	12.72	6,000	76,320	200	155,724	12,242
Indiana, Illinois & Iowa	49.24	7,000	344,680				4.61	2,000	9,220	49 24	1,000	49,240	2,365	405,505	8,235
Indiana & Illinois Southern	32.00	9,900	316,800				1.00	2,000	2,000	32.00	600	19,200	50	338,050	10,564
Indianapolis, Decatur & Western	76.26	15,700	1,197,282				13.67	4,000	54,680	76.26	2,500	190,650	55,550	1,498,162	19,645
Indiana & Lake Michigan	14.24	8,000	113,920				1.77	1,500	2,655				30	116,605	8,188
Indianapolis Union railway	.92	1,500,000	1,380,000	.92	600,000	552,000	3.16	200,000	632,000				5-0,000	3,064,000	
Indianapolis & Vincennes	116.92	19,401	2,268,248				10.59	2,500	26,475	116.92	1,300	151,996	9,935	2,456,654	21,011
Island Coal branch, I. & V	11.88	11,700	128,996				6.83	3,000	20,490	11.88	1,300	15,444		174,930	14,724
Gosport branch, I. & V	4.31	10,900	46,979				.13	2,500	325	4.31	1,300	5,603		52,907	12,275
Joliet & Northern Indiana	15.47	12,100	187,187				2.67	2,500	6,675	15.47	4,100	63,427	2,320	259,609	16,781
Kentucky & Indiana Bridge Company	.35	500,000	175,000	.12	250,000	30,000				.35	3,000	1,050	180	206,230	
Lake Erie & Western	317.14	14,000	4,439,960				67.59	3,000	202,770	317.14	2,700	856,278	59,935	5,558,943	17,528
Lake Shore & Michigan Southern	152.94	40,500	6,194,070	73.42	9,000	660,780	74.11	4,000	296,440	152.94	5,500	841,170	148,865	8,141,325	53,232
Louisville, Evansville & St. Louis	209.58	15,100	3,164,658				28.73	3,500	100,555	209.58	2,500	523,950	25,755	3,814,918	18,202
Louisville & Nashville	28.33	19,700	558,101				15.23	4,000	60,920	28.33	2,000	56,660	120,150	795,831	28,091
Louisville, New Albany & Chicago	451.40	17,100	7,718,940				89.78	3,500	314,230	451.40	3,100	1,399,340	57,505	9,490,015	21,023
Louisville, New Albany & Corydon	10.6	6,400	67,968				.10	1,500	150	10.62	1,200	12,744	325	81,187	7,644
Louisville Bridge Company	.08	3,000,000	240,000											240,000	
Michigan Central	42.41	18,000	763,380	42.41	10,000	424,100	32.50	3,500	113,750	42.41	4,100	173,881	29,140	1,504,251	35,469
Michigan Air Line	6.06	7,900	47,874				1.58	2,500	3,950	6.06	4,100	24,846	2,550	79,220	13,072
Midland	77	5,800	446,600				3.75	1,500	5,625	77	800	61,600	4,220	518,045	6,728
New Albany Belt & Terminal	2.50	80,000	200,000											200,000	80,000
New Albany Highland	1.19	16,806	20,000											20,000	16,806
New York, Chicago & St. Louis	151.02	28,900	4,364,478				34.30	4,500	154,350	151.02	4,900	739,998	30,500	5,289,326	35,024
Ohio Valley	4.22	10,600	44,732				.12	2,000	240	4.22	2,000	8,440		53,412	12,652
Ohio & Mississippi	233.29	23,200	5,412,328				65.97	4,000	263,880	233.29	3,000	699,870	165,125	6,541,203	28,038
Orleans, West Baden & French Lick	17.70	7,200	127,440				1.65	1,500	2,475	17.70	3,100	54,870	2,255	187,040	10,567
Peoria & Eastern, Western division	78.59	27,000	2,121,930				24.59	3,500	86,065	78.59	2,700	212,193	14,750	2,434,938	30,982
Peoria & Eastern, Eastern division	74.88	22,700	1,699,776				9.47	3,500	33,145	74.88	2,700	202,176	3,800	1,938,897	25,893
575 Peoria, Decatur & Evansville	37.72	13,800	520,536				5.07	3,000	15,210	37.72	3,000	113,160	10,475	659,381	17,480
Peru & Detroit	7.26	6,100	44,286				.14	2,000	280	7.26	2,900	21,054		65,620	9,024
Pittsburg, Cincinnati, Chicago & St. Louis	647.42	28,500	18,451,470	4.23	8,000	33,840	143.84	4,500	647,280	647.42	5,000	3,237,100	296,780	22,666,470	35,014
Pittsburg, Ft. Wayne & Chicago	152.57	57,500	8,772,775	15.21	10,000	152,100	60.75	5,000	303,750	152.57	9,500	1,449,415	225,030	10,903,070	71,462

Rantoul	8.22	10,300	84,666				.50	2,000	1,000	8.22	500	4,110	760	90,536	11,014
State Line & Indiana City	3.36	17,400	58,464				.38	3,000	1,140	3.36	9,500	31,920	2,800	94,324	28,070
Sturgis, Goshen & St. Louis	25.64	10,400	266,656				1.73	2,500	4,325	25.64	500	12,820	1,550	285,351	11,121
Terre Haute & Indianapolis	79.90	21,800	1,741,820				97.83	3,500	342,405	79.90	9,800	783,020	53,012	2,920,257	36,549
Terre Haute & Logansport	182.57	12,700	2,318,639				35.22	3,000	105,660	182.57	2,100	383,397	13,780	2,821,476	15,454
Toledo, St. Louis & Kansas City	171.20	12,500	2,140,000				25.14	3,500	87,990	171.20	2,200	376,640	33,850	2,638,480	15,412
Vernon, Greensburg & Rushville	45.54	7,500	334,050				4.94	2,000	9,880	44.54	4,500	200,430	1,340	545,700	12,227
Wabash	166	22,700	3,768,200				71.66	4,000	284,240	166	2,900	481,400	124,665	4,658,505	28,063
White River	.46	25,000	11,500				.80	25,000	20,000					31,500	
Louisville & Jeffersonville Bridge Company			80,635											80,635	
Total	6,015.58		$127,149,232	159.37		$2,901,180	1,490 96		$6,646,355	5,873.83		$21,598,416	$2,514,392	$160,809,575	

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Recapitulation.

	Miles.	Value.
Main track	6,015.58	$127,149,232
Second main	159.37	2,901,180
Side track	1,490.96	6,646,355
Rolling stock	5,873.83	21,598,416
Improvements on right of way		2,514,392
Total valuation for the year 1891		$160,809,575

Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Adams county:															
Chicago & Erie	14.38	$29,600	$425,648				3.67	$5,000	$18,350	14.38	$3,500	$50,330	$1,950	$496,278	
Cincinnati, Richmond & Ft. Wayne	24.61	18,000	442,980				3.79	4,000	15,160	24.61	3,000	73,830	2,650	534,620	
Toledo, St. Louis & Kansas City	16.76	12,500	209,500				1.08	3,500	3,780	16.76	2,200	36,872	500	250,652	
	55.75		1,078,128				8.54		37,290	55.75		161,032	5,100		$1,281,550
Allen county:															
Cincinnati, Richmond & Ft. Wayne	9.21	18,000	165,780				.77	4,000	3,080	9.21	3,000	27,630	100	196,590	
Eel river	3.76	13,100	49,256							3.76	2,900	10,904		60,160	
Ft. Wayne & Jackson	14.46	14,800	214,008				3.05	3,000	9,150	14.46	5,500	79,530	4,650	307,338	
Ft. Wayne, Cincinnati & Louisville	10.82	15,300	165,546				.50	3,000	1,500	10.82	1,600	17,312	5,150	189,508	
Grand Rapids & Indiana	13.45	15,600	209,820				1.03	3,500	3,605	13.45	3,000	40,350	2,250	256,025	
New York, Chicago & St. Louis	28.18	28,900	814,402				12.30	4,500	55,350	28.18	4,900	138,082	21,780	1,029,614	
Pittsburg, Ft. Wayne & Chicago	30.14	57,500	1,733,050	11.65	$10,000	$116,500	25.55	5,000	127,750	30.14	9,500	286,330	178,900	2,442,530	
Wabash	30.47	22,700	691,669				10.88	4,000	43,520	30.47	2,900	88,363	35,430	858,982	
	140.49		4,043,531	11.65		116,500	54.08		243,955	140.49		688,501	248,260		5,340,747
Bartholomew county:															
Columbus, Hope & Greensburg	15.30	11,400	174,420				3.98	2,000	7,960	15.30	4,500	68,850	745	251,975	
Evansville & Richmond	12.57	10,100	126,957				.44	3,000	1,320					128,277	
Pittsburg, Cincinnati, Chicago & St. Louis	42.11	28,500	1,200,135				6.90	4,500	31,050	42.11	5,000	210,550	8,410	1,450,145	
	69.98		1,501,512				11.32		40,330	57.41		279,400	9,155		1,830,397
578 Benton county:															
Chicago & Indiana Coal	18.59	20,000	371,800				2.90	3,000	8,700	18.59	6,000	111,540	2,540	494,580	
Cincinnati, Lafayette & Chicago	22.32	31,900	712,008				4.22	4,000	16,880	22.32	4,500	100,440	1,705	831,033	

Lake Erie & Western	23.34	14,000	326,760				4.65	3,000	13,950	23.34	2,700	63,018	2,310	406,038	
	64.25		1,410,568				11.77		39,530	64.25		274,998	6,555		1,731,651
Blackford county:															
Ft. Wayne, Cincinnati & Louisville	14.36	15,300	219,708				3.27	3,000	9,810	14.36	1,600	22,976	2,500	254,994	
Pittsburg, Cincinnati, Chicago & St. Louis	13.66	28,500	389,310				1.57	4,500	7,065	13.66	5,000	68,300	970	465,645	
	28.02		609,018				4.84		16,875	28.02		91,276	3,470		720,639
Boone county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	28.90	28,100	812,090				5.21	4,000	20,840	28.90	4,500	130,050	2,450	965,430	
Peora & Eastern—West. division	4.65	27,000	125,550				.90	3,500	3,150	4.65	2,700	12,555	500	141,755	
Louisville, New Albany & Chicago	5.35	17,100	91,485				.26	3,500	910	5.35	3,100	16,585	300	109,280	
Midland	24.55	5,800	142,390				1.00	1,500	1,500	24.55	800	19,640	2,090	165,620	
Terre Haute & Logansport	.40	12,700	5,080							.40	2,100	840		5,920	
	63.85		1,176,595				7.37		26,400	63.85		179,670	5,340		1,388,005
Brown county:															
(None.)															
Carroll county:															
Louisville, New Albany & Chicago	24.75	17,100	423,225				3.55	3,500	12,425	24.75	3,100	76,725	2,625	515,000	
Terre Haute & Logansport	19.52	12,700	247,804				1.50	3,000	4,800	19.52	2,100	40,992	770	294,466	
Wabash	15.08	22,700	342,316				3.25	4,000	13,000	15.08	2,900	43,732	2,520	401,568	
	59.35		1,013,445				8.40		30,225	59.35		161,449	5,915		1,211,034
579 Cass county:															
Eel River	12.81	13,100	167,811				1.26	3,000	3,780	12.81	2,900	37,149	1,620	210,360	
Pittsburg, Cincinnati, Chicago & St. Louis	49.63	28,500	1,414,455				16.14	4,500	72,630	49.63	5,000	248,150	64,075	1,799,310	
Terre Haute & Logansport	19.01	12,700	241,427				4.43	3,000	13,290	19.01	2,100	39,921	5,450	300,088	
Wabash	17.98	22,700	408,146				5.04	4,000	20,160	17.98	2,900	52,142	4,620	485,068	
	99.43		2,231,839				26.87		109,860	99.43		377,362	75,765		2,794,826
Clark county:															
Louisville Bridge Co.	.08	3,000,000	240,000											240,000	
Louisville & Jeffersonville Bridge Co.			80,635											80,635	
Louisville, New Albany & Chicago	12.79	17,100	218,709				1.22	3,500	4,270	12.79	3,100	39,649	745	263,373	
Ohio & Mississippi, including New Albany & Eastern	31.27	23,200	725,464				4.33	4,000	17,320	31.27	3,000	93,810	3,090	839,684	
Pittsburg, Cincinnati, Chicago & St. Louis	28.04	28,500	799,140	2.58	8,000	20,640	10.81	4,500	48,645	28.04	5,000	140,200	6,745	1,015,370	
	72.18		2,063,948	2.58		20,640	16.36		70,235	72 10		273,659	10,580		2,439,062

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Clay county:															
Chicago & Indiana Coal	6.95	$20,000	$139,000				14.77	$3,000	$44,310	6.95	$6,000	$41,700	$7,975	$232,985	
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division	8.92	28,700	256,004				5.40	4,000	21,600	8.92	4,500	40,140	1,510	319,254	
Evansville & Indianapolis	16.57	11,800	195,526				7.83	2,000	15,660	16.57	500	8,285	175	219,646	
Evansville & Terre Haute							.57	3,500	1,960					1,960	
Indiana Block Coal	4.08	5,700	23,256				.67	2,500	1,675	4.08	6,000	24,480	100	49,511	
580 Terre Haute & Indianapolis	13.81	21,800	301,058				49.52	3,500	173,320	13.81	9,800	135,338	3,465	613,181	
	50.33		914,844				78.75		258,525	50.33		249,943	13,225		1,436,537
Clinton county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	3.70	28,100	103,970				1.11	4,000	4,440	3.70	4,500	16,650	360	125,420	
Lake Erie & Western	25.24	14,000	353,360				3.64	3,000	10,920	25.24	2,700	68,148	1,250	433,678	
Louisville, New Albany, Chicago	24.78	17,100	423,738				2.14	3,500	7,490	24.78	3,100	76,818	1,905	509,951	
Terre Haute & Logansport	22.01	12,700	279,527				3.25	3,000	9,750	22.01	2,100	46,221	810	336,308	
Toledo, St. Louis & Kansas City	23.26	12,500	290,750				3.53	3,500	12,355	23.26	2,200	51,172	28,300	382,577	
	98.99		1,451,345				13.67		44,955	98.99		259,009	32,625		1,787,934
Crawford county:															
Louisville, Evansville & St. Louis	25.62	15,100	386,862				2.79	3,500	9,765	25.62	2,500	64,050	2,460	463,137	
	25.62		386,862				2.79		9,765	25.62		64,050	2,460		463,137
Daviess county:															
Evansville & Indianapolis	34.46	11,800	406,628				3.68	2,000	7,360	34.46	500	17,230	300	431,518	
Evansville & Richmond	11.10	10,100	112,110				.85	3,000	2,550				225	114,885	
Ohio & Mississippi	18.20	23,200	422,240				16.59	4,000	66,360	18.20	3,000	54,600	125,515	668,715	
	63.76		940,978				21.12		76,270	52.66		71,830	126,040		1,215,118
Dearborn county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chi. div.	19.43	28,100	545,983				3.11	4,000	12,440	19.43	4,500	87,435	1,530	647,388	
Cleveland, Cincinnati, Chicago & St. Louis—Whitewater div.	6.25	4,300	26,875				.14	2,500	350	6.25	4,500	28,125	450	55,800	

Lawrenceburg branch	2.91	5,000	14,550				3.71	2,000	7,420	2.91	4,500	13,095	1,510	36,575	
Harrison branch	.81	5,500	4,455				1.03	2,000	2,060	.81	4,500	3,645		10,160	
Cincinnati & Southern Ohio River	3.69	4,750	17,527				1.11	2,000	2,220	3.69	4,500	16,605	500	36,852	
Ohio & Mississippi	20.74	23,200	481,168				5.09	4,000	20,360	20.74	3,000	62,220	5,210	568,958	
	53.83		1,090,558				14.19		44,850	53.83		211,125	9,200		1,355,733
581 Decatur county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chi. div	21.07	28,100	592,067				13.27	4,000	53,080	21.07	4,500	94,815	4,265	744,227	
Columbus, Hope & Greensburg	8.98	11,400	102,372				.26	2,000	520	8.98	4,500	40,410	210	143,512	
Evansville & Richmond	6.33	10,100	63,933				.57	3,000	1,710				100	65,743	
Vernon, Greensburg & Rushville	24.94	7,500	187,050				1.99	2,000	3,980	24.94	4,500	112,230	220	303,480	
	61.32		945,422				16.09		59,290	54.99		247,455	4,795		1,256,962
De Kalb county:															
Baltimore & Ohio and Chicago	20.72	26,100	540,792				12.04	3,500	42,140	20.72	3,500	72,520	47,460	702,912	
Eel River	23.98	13,100	314,138				7.38	3,000	22,140	23.98	2,000	60,542	9,255	415,075	
Ft. Wayne & Jackson	19.78	14,800	292,744				2.33	3,000	6,990	19.78	5,500	108,790	2,250	410,774	
Grand Rapids & Indiana	1.09	15,600	17,004							1.09	3,000	3,270		20,274	
Lake Shore & Michigan Southern	20.26	40,500	820,530	20.26	9,000	182,340	6.01	4,000	24,040	20.26	5,500	111,430	13,000	1,151,340	
	85.83		1,985,208	20.26		182,340	27.76		95,310	85.83		365,552	71,965		2,700,375
Delaware county:															
Cleveland, Cincinnati, Chicago & St. Louis—Ind'p's div	20.54	27,900	573,066				4.75	4,000	19,000	20.54	4,500	92,430	8,075	692,571	
Ft. Wayne, Cincinnati & Louisville	21.24	15,300	324,972				7.04	3,000	21,120	21.24	1,600	33,984	2,050	382,126	
Lake Erie & Western	23.18	14,000	324,520				5.68	3,000	17,040	23.18	2,700	62,586	3,820	407,966	
	64.96		1,222,558				17.47		57,160	64.96		189,000	12,945		1,482,663
582 Dubois county:															
Louisville, Evansville & St. Louis	37.88	15,100	571,988				6.20	3,500	21,700	37.88	2,500	94,700	10,585		
	37.88		571,988				6.20		21,700	37.88		94,700	10,585		698,973
Elkhart county:															
Baltimore & Ohio & Chicago	6.57	26,100	171,477				.93	3,500	3,255	6.57	3,500	22,995	1,270	198,997	
Cincinnati, Wabash & Michigan	26.64	7,700	205,128				4.87	3,000	14,610	26.64	2,500	66,600	2,750	289,088	
Lake Shore & Michigan Southern	25.63	40,500	1,038,015	20.39	9,000	183,510	19.72	4,000	78,880	25.63	5,500	140,965	96,250	1,537,620	
Sturgis, Goshen & St. Louis	12.29	10,400	127,816				1.34	2,500	3,350	12.29	500	6,145	700	138,011	
	71.13		1,542,436	20.39			26.86		100,095	71.13		236,705	100,970		2,163,716

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Fayette county:															
Cincinnati, Hamilton & Indianapolis	15.28	$31,200	$476,736	.....	.....	.....	2.91	$5,000	$14,550	15.28	$2,500	$38,200	$2,725	$532,011	
Ft. Wayne, Cincinnati & Louisville	4.86	15,300	74,358	.....	.....	.....	.48	3,000	1,440	4.86	1,600	7,776	800	84,374	
Pittsburg, Cincinnati, Chicago & St. Louis	8.43	28,500	240,255	.....	.....	.....	.39	4,500	1,755	8.43	5,000	42,150	300	284,460	
White Water div. C., C., C. & St. L.	14.16	4,300	60,888	.....	.....	.....	1.27	2,500	3,175	14.16	4,500	63,720	1,000	128,783	
	42.73	.....	852,237	.....	.....	.....	5.05	.....	20,920	42.73	.....	151,846	4,625		$1,029,628
Floyd county:															
Kentucky & Indiana Bridge Co.	.35	500,000	175,000	.12	$250,000	$30,000	.....	.....	.....	.35	3,000	1,050	180	206,230	
Louisville, Evansville & St. Louis	10.07	15,100	152,057	.....	.....	.....	3.76	3,500	13,160	10.07	2,500	25,175	3,820	194,212	
Louisville, New Albany & Chicago	9.02	17,100	154,242	.....	.....	.....	6.17	3,500	21,595	9.02	3,100	27,962	13,060	216,859	
New Albany & Highland	1.19	16,806	20,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	20,000	
New Albany Belt & Terminal	2.50	80,000	200,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	200,000	
Ohio & Mississippi	.90	23,200	20,880	.....	.....	.....	.42	4,000	1,680	.90	3,000	2,700	2,500	27,760	
Pittsburg, Cincinnati, Chicago & St. Louis	1.94	28,500	55,290	1.65	8,000	13,200	1.20	4,500	5,400	1.94	5,000	9,700	5,760	89,350	
	24.78	.....	777,469	1.77	.....	43,200	11.55	.....	41,835	22.28	.....	66,587	25,320		954,411
583 Fountain county:															
Attica, Covington & Southern	14.47	6,700	96,949	.....	.....	.....	1.11	1,500	1,665	14.47	2,900	41,963	250	140,827	
Chicago & Indiana Coal	24.51	20,000	490,200	.....	.....	.....	5.47	3,000	16,410	24.51	6,000	147,060	3,970	657,640	
Peoria & Eastern—Western div.	16.89	27,000	456,030	.....	.....	.....	3.62	3,500	12,670	16.89	2,700	45,603	800	515,103	
Toledo, St. Louis & Kansas City	25.12	12,500	314,000	.....	.....	.....	3.51	3,500	12,285	25.12	2,200	55,264	350	381,899	
Wabash	8.94	22,700	202,938	.....	.....	.....	3.22	4,000	12,880	8.94	2,900	25,926	2,035	243,779	
	89.93	.....	1,560,117	.....	.....	.....	16.93	.....	55,910	89.93	.....	315,816	7,405		1,939,248
Franklin county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chicago div.	3.36	28,100	94,416	.....	.....	.....	.07	4,000	280	3.36	4,500	15,120	.....	109,816	

Cleveland, Cincinnati, Chicago & St. Louis—White Water div.	27.51	4,300	118,293				.07	2,500	175	27.51	4,500	123,795	1,900	244,163		
	30.87		212,709				.14		455	30.87		138,915	1,900		353,979	
Fulton county:																
Chicago & Erie	29.30	29,600	867,280				7.00	5,000	35,000	29.30	3,500	102,550	3,325	1,008,155		
Lake Erie & Western	13.31	14,000	186,340				.92	3,000	2,760	13.31	2,700	35,937	750	225,787		
Terre Haute & Logansport	18.14	12,700	230,378				1.15	3,000	3,450	18.14	2,100	38,094	820	277,742		
	60.75		1,283,998				9.07		41,210	60.75		176,581	4,895		1,506,684	
Gibson county:																
Evansville & Ind'p'lis.	13.55	11,800	159,890				1.13	2,000	2,260	13.55	500	6,775	1,350	170,275		
Evansville & Terre Haute	36.89	16,400	604,504				5.92	3,500	20,720	36.86	6,500	239,590	10,700	875,514		
Louisville, Evansville & St. Louis	25.34	15,100	382,634				3.18	3,500	11,130	25.34	2,500	63,350	500	457,614		
	75.75		1,147,028				10.23		34,110	75.75		309,715	12,550		1,503,403	
Grant county:																
Cincinnati, Wabash & Michigan	19.94	7,700	153,538				5.89	3,000	17,670	19.94	2,500	49,850	1,700	222,758		
Pittsburg, Cincinnati, Chicago & St. Louis	25.61	28,500	729,885				6.34	4,500	28,530	25.61	5,000	128,050	3,175	889,640		
Toledo, St. Louis & Kansas City	25.69	12,500	321,125				6.49	3,500	22,715	25.69	2,200	56,518	1,425	401,783		
	71.24		1,204,548				18.72		68,915	71.24		234,418	6,300		1,514,181	
Greene county:																
Bedford & Bloomfield	25.40	5,900	149,860				1.67	1,000	1,670	25.40	1,000	25,400	420	177,350		
Evansville & Indianapolis	23.50	11,800	277,300				1.91	2,000	3,820	23.50	500	11,750	550	293,420		
Indiana & Illinois Southern	10.75	9,900	106,425				.33	2,000	660	10.75	600	6,450	25	113,560		
Indianapolis & Vincennes	24.15	19,400	468,510				1.84	2,500	4,600	24.15	1,300	31,395	1,750	506,255		
Island coal branch, I. & V.	9.86	11,700	115,362				3.97	3,000	11,910	9.86	1,300	12,818		140,090		
	93.66		1,117,457				9.72		22,660	93.66		87,813	2,745		1,230,675	
Hamilton county:																
Lake Erie & Western	20.73	14,000	290,220				3.22	3,000	9,660	20.73	2,700	55,971	1,055	356,906		
Louisville, New Albany & Chicago	16.94	17,100	289,674				1.74	3,500	6,090	16.94	3,100	52,514	960	349,238		
Midland	20.40	5,800	118,320				1.25	1,500	1,875	20.40	800	16,320	665	137,180		
	58.07		698,214				6.21		17,625	58.07		124,805	2,680		843,324	
Hancock county:																
Cincinnati, Hamilton & Indianapolis	8.92	31,200	278,304				.74	5,000	3,700	8.92	2,500	22,300	825	305,129		
Cincinnati, Wabash & Michigan	5.41	7,700	41,657							5.41	2,500	13,525		55,182		
Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division	6.99	27,900	195,021				1.47	4,000	5,880	6.99	4,500	31,455	280	232,636		

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Peoria & Eastern—Eastern division..	20.47	$22,700	$464,669	.....	.....	.....	2.29	$3,500	$8,015	20.47	$2,700	$55,269	$600	$528,553	
Pittsburg, Cincinnati, Chicago & St. Louis.....	18.49	28,500	526,965	.....	.....	.....	3.16	4,500	14,220	18.49	5,000	92,450	2,815	636,450	
	60.28	.....	1,506,616	.....	.....	.....	7.66	.....	31,815	60.28	.....	214,999	4,520		$1,757,950
585 Harrison county:															
Louisville, Evansville & St. Louis.....	17.12	15,100	258,512	.....	.....	.....	2.14	3,500	7,490	17.12	2,500	42,800	650	309,452	
Louisville, New Albany & Corydon.....	10.62	6,400	67,968	.....	.....	.....	.10	1,500	150	10.62	1,200	12,744	325	81,187	
	27.74	.....	326,480	.....	.....	.....	2.24	.....	7,640	27.74	.....	55,544	975		390,639
Hendricks county:															
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division.....	19.93	28,700	571,991	.....	.....	.....	2.72	4,000	10,880	19.93	4,500	89,685	2,880	675,436	
Indianapolis, Decatur & Western.....	19.70	15,700	309,290	.....	.....	.....	1.06	4,000	4,240	19.70	2,500	49,250	600	363,380	
Indianapolis & Vincennes.....	1.69	19,400	32,786	.....	.....	.....	.12	2,500	300	1.69	1,300	2,197	.....	35,283	
Peoria & Eastern—Western division.....	17.22	27,000	464,940	.....	.....	.....	1.97	3,500	6,895	17.22	2,700	46,494	550	518,879	
Terre Haute & Indianapolis....	19.65	21,800	428,370	.....	.....	.....	3.51	3,500	12,285	19.65	9,800	192,570	1,445	634,670	
	78.19	.....	1,807,377	.....	.....	.....	9.38	.....	34,600	78.19	.....	380,196	5,475		2,227,648
Henry county:															
Ft. Wayne, Cincinnati & Louisville.....	29.33	15,300	448,749	.....	.....	.....	2.62	3,000	7,860	29.33	1,600	46,928	2,600	506,137	
Peoria & Eastern—Eastern division.....	22.00	22,700	499,400	.....	.....	.....	2.33	3,500	8,155	22.00	2,700	59,400	2,000	568,955	
Pittsburg, Cincinnati, Chicago & St. Louis.....	44.39	28,500	1,265,115	.....	.....	.....	5.25	4,500	23,625	44.39	5,000	221,950	4,405	1,515,095	
Cincinnati, Wabash & Michigan.....	6.63	7,700	51,051	.....	.....	.....	.24	3,000	720	6.63	2,500	16,575	250	68,596	
	102.35	.....	2,264,315	.....	.....	.....	10.44	.....	40,360	102.35	.....	344,853	9,255		2,658,783
586 Howard county:															
Lake Erie & Western...	11.30	14,000	158,200	.....	.....	.....	1.95	3,000	5,850	11.30	2,700	30,510	510	195,070	
Pittsburg, Cincinnati, Chicago & St. Louis.....	13.72	28,500	391,020	.....	.....	.....	6.44	4,500	28,980	13.72	5,000	68,600	1,760	490,360	

Pittsburg, Cincinnati, Chicago & St. Louis	13.72	28,500	391,020												
Toledo, St. Louis & Kansas City	26.74	12,500	334,250				2.35	3,500	8,235	26.74	2,200	58,828	925	402,228	
	51.76		883,470				10.74		43,055	51.76		157,938	3,195		1,087,658
Huntington county:															
Chicago & Erie	18.94	29,600	560,624				14.02	5,000	70,100	18.94	3,500	66,290	29,750	726,764	
Toledo, St. Louis & Kansas City	8.10	12,500	101,250				1.30	3,500	4,550	8.10	2,200	17,820	475	124,095	
Wabash	20.25	22,700	459,675				16.40	4,000	65,600	20.25	2,900	58,725	29,375	613,375	
	47.29		1,121,549				31.72		140,250	47.29		142,835	59,600		1,464,234
Jackson county:															
Evansville & Richmond	30.00	10,100	303,000				1.76	3,000	5,280				425	308,705	
Ohio & Mississippi	31.06	23,200	720,592				6.48	4,000	25,920	31.06	3,000	93,180	10,860	850,552	
Pittsburg, Cincinnati, Chicago & St. Louis	19.47	28,500	554,895				2.58	4,500	11,610	19.47	5,000	97,350	2,470	666,325	
	80.53		1,578,487				10.82		42,810	50.53		190,530	13,755		1,825,582
Jasper county:															
Chicago & Indiana Coal	19.57	20,000	391,400				3.95	3,000	11,850	19.57	6,000	117,420	635	521,305	
Indiana, Illinois & Iowa	18.04	7,000	126,280				1.06	2,000	2,120	18.04	1,000	18,040	520	146,960	
Louisville, New Albany & Chicago	21.92	17,100	374,832				3.04	3,500	10,640	21.92	3,100	67,952	975	454,399	
Pittsburg, Cincinnati, Chicago & St. Louis	8.84	28,500	251,940				1.59	4,500	7,155	8.84	5,000	44,200	240	303,535	
	68.37		1,144,452				9.64		31,765	68.37		247,612	2,370		1,426,199
Jay county:															
Cincinnati, Richmond & Ft. Wayne	18.47	18,000	332,460				3.16	4,000	12,640	18.47	3,000	55,410	2,925	403,435	
Lake Erie and Western	24.82	14,000	347,480				2.90	3,000	8,700	24.82	2,700	67,014	550	423,744	
Pittsburg, Cincinnati, Chicago & St. Louis	9.38	28,500	267,330				2.46	4,500	11,070	9.38	5,000	46,900	1,985	327,285	
	52.67		947,270				8.52		32,410	52.67		169,324	5,460		1,154,464
Jefferson county:															
Ohio & Mississippi	6.55	23,200	151,960				.50	4,000	2,000	6.55	3,000	19,650	270	173,880	
Pittsburg, Cincinnati, Chicago & St. Louis	15.01	28,500	427,785				4.69	4,500	21,105	15.01	5,000	75,050	9,465	533,405	
	21.56		579,745				5.19		23,105	21.56		94,700	9,735		707,285
587 Jennings county:															
Ohio & Mississippi	33.66	23,200	780,912				5.67	4,000	22,680	33.66	3,000	100,980	7,615	912,187	
Pittsburg, Cincinnati, Chicago & St. Louis	21.34	28,500	608,190				1.74	4,500	7,830	21.34	5,000	106,700	285	723,005	
Vernon, Greensburg & Rushville	8.81	7,500	66,075				1.93	2,000	3,860	8.81	4,500	39,645	440	110,020	
	63.81		1,455,177				9.34		34,370	63.81		247,325	8,340		1,745,212

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Johnson county:															
Fairland, Franklin & Martinsville	19.97	$6,400	$127,808				1.50	$2,000	$3,180	19.97	$4,500	$89,865	$320	$221,173	
Pittsburg, Cincinnati, Chicago & St. Louis	21.70	28,500	618,450				2.90	4,500	13,050	21.70	5,000	108,500	7,035	747,035	
	41.67		746,258				4.49		16,230	41.67		198,365	7,355		$968,208
Knox county:															
Cairo, Vincennes & Chicago	6.85	12,000	82,200				.08	3,000	240					82,440	
Evansville & Terre Haute	28.98	16,400	475,272				6.49	3,500	22,715	28.98	6,500	188,370	3,975	690,332	
Indianapolis & Vincennes	27.60	19,400	535,440				2.45	2,500	6,125	27.60	1,300	35,880	5,095	582,540	
Ohio & Mississippi	15.11	23,200	350,552				6.25	4,000	25,000	15.11	3,000	45,330	3,275	424,157	
	78.54		1,443,464				15.27		54,080	71.69		269,580	12,345		1,779,469
Kosciusko county:															
Baltimore & Ohio & Chicago	14.57	26,100	380,277				2.53	3,500	8,855	14.57	3,500	50,995	4,260	444,387	
Cincinnati, Wabash & Michigan	28.38	7,700	218,526				5.09	3,000	15,270	28.38	2,500	70,950	1,700	306,446	
Eel River	1.94	13,100	25,414							1.94	2,900	626		31,040	
588 New York, Chicago & St. Louis	20.53	28,900	593,317				3.61	4,500	16,245	20.53	4,900	100,597	2,190	712,349	
Pittsburg, Ft. Wayne & Chicago	22.08	57,500	1,269,600				6.53	5,000	32,650	22.08	9,500	209,760	7,700	1,519,710	
	87.50		2,487,134				17.76		73,020	87.50		437,928	15,850		3,013,932
Lagrange county:															
Grand Rapids & Indiana	16.95	15,600	264,420				1.55	3,500	5,425	16.95	3,000	50,850	1,350	322,045	
Sturgis, Goshen & St. Louis	13.35	10,400	138,840				.39	2,500	975	13.35	5,000	6,675	850	147,340	
	30.30		403,260				1.94		6,400	30.30		57,525	2,200		469,385
Lake county:															
Baltimore & Ohio & Chicago	17.88	26,100	466,668	11.23	8,000	89,840	3.75	3,500	13,125	17.88	3,500	62,580	1,460	633,673	
Chicago & Erie	24.42	29,600	722,832				16.34	5,000	81,700	24.42	3,500	85,470	6,925	896,927	
Chicago & Calumet Terminal	7.20	4,200	30,240				11.17	3,000	33,510	7.20	1,200	8,640	2,500	75,070	
Chicago & Grand Trunk	16.07	32,100	515,847				2.99	4,500	13,455	16.07	4,500	72,315	2,100	603,717	
Elgin, Joliet & Eastern	16.62	19,600	325,752				3.49	3,500	12,215	16.62	2,000	33,240	3,505	374,712	
Indiana, Illinois & Iowa	11.26	7,000	78,820				.58	2,000	1,160	11.26	1,000	11,260	570	91,810	
Joliet & Northern Indiana	15.47	12,100	187,187				2.67	2,500	6,675	15.47	4,100	63,427	2,320	259,609	

Joliet & Northern Indiana															
Lake Shore & Michigan Southern	18.25	40,500	739,125	8.90	9,000	80 100	5.70	4,000	22,800	18.25	5,500	100,375	1,875	944,275	
Louisville, New Albany & Chicago	33.54	17,100	573,534				7 53	3,500	26,355	33 54	3,100	103.974	2,415	706,278	
Michigan Central	16.41	18,000	295,380	16.41	10,000	164,100	8.49	3,500	29,715	16.41	4,100	67,281	5,465	561,941	
New York, Chicago & St. Louis	18.06	28,900	521,934				3.55	4,500	15,975	18.06	4,900	88,494	1,335	627,738	
Pittsburgh, Ft. Wayne & Chicago	20.07	57,500	1,154,025	3.56	10,000	35,600	7.83	5,000	39,150	20.07	9,500	190,665	3,905	1,423,345	
Pittsburgh, Cincinnati, Chicago & St Louis	22.13	28,500	630,705				3.29	4,500	14,805	22 13	5,000	110,650	3,810	759,970	
State Line & Indiana City	3.36	17,400	58,464				.38	3,000	1,140	3.36	9,500	31,920	2,800	94,324	
	240.74		6,300,513	40.16		369,640	77.76		311,780	240.74		1,030,291	40,985		8,053,209
589 La Porte county:															
Baltimore & Ohio & Chicago	21.16	26,100	552,276				2.02	3,500	7,070	21.16	3,500	74,060	2,750	36,156	
Chicago & Erie	3.09	29,600	91,464				.65	5,000	3,250	3 09	3,500	10,815	50	105,579	
Chicago & Indiana Coal	5.56	20,000	111,200				61	3,000	1,830	5.56	6,000	33,360	50	146,440	
Chicago & Grand Trunk	23.66	32,100	759,486				4.71	4,500	21,195	24.66	4,500	106,470	2,750	889,901	
Chicago & West Michigan	34.46	9,500	327,370				4.40	2,000	8,800	34.46	2,000	68,920	5,590	410,680	
Lake Erie & Western	25.93	14,000	363,020				8.98	3,000	26,940	25.93	2,700	70,011	1,225	461,196	
Lake Shore & Michigan Southern	23.93	40,500	969,165	11.24	9,000	101,160	8.74	4,000	34,960	23.93	5,500	131,615	13,100	1,250,000	
Louisville, New Albany & Chicago	32.37	17,100	553,527				10.12	3,500	35,420	32.37	3,100	100,347	6,600	695,894	
Michigan Central	8.96	18,000	161,280	8.96	10,000	89,600	18.58	3,500	65,030	8.96	4,100	36,736	20,765	373,411	
New York, Chicago & St. Louis	11.56	28,900	334,084				1.89	4,500	8,505	11.56	4,900	56,644	825	400,058	
Pittsburgh, Cincinnati, Chicago & St. Louis	6.86	28,500	195,510				.64	4,500	2,880	6.86	5,000	34,300	640	233,330	
Pittsburgh, Ft. Wayne & Chicago	12.07	57,500	694,025				3.19	5,000	15,950	12.07	9,500	114,665	2,800	827,440	
	209.61		5,112,407	20.20		190.760	64.53		231,830	209.61		837,943	57,145		6,430,0—
Lawrence county:															
Bedford & Bloomfield	15.96	5,900	94,164				4.09	1,000	4,090	15.96	1,000	15,960	350	114,564	
Evansville & Richmond	27.30	10,100	275,730				1 29	3,000	3,870				1,175	280,775	
Louisville, New Albany & Chicago	25.09	17,100	429,039				10.60	3,500	37,100	25.09	3,100	77.779	2,180	546,698	
Ohio & Mississippi	25.92	23,200	601,344				13.79	4,000	55,160	25.92	3,000	77,760	1,800	736,064	
	94.27		1,400,277				29.77		100,220	66.97		171,499	5,505		1,677,501
590 Madison county:															
Cincinnati, Wabash & Michigan	31 80	7,700	244,860				5.28	3,000	15,810	31.80	2,500	79,500	950	341,150	
Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division	20.40	27,900	569,160				7.11	4,000	28,400	20.40	4,500	91,800	2,160	691,560	
Lake Erie & Western	15.46	14 000	216,440				2.65	3,000	7,950	15.46	2,700	41,742	700	266,832	

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Midland	10.66	$5,800	$61,828				.75	$1,500	$1,125	10.66	$800	$8,528	$420	$71,901	
Pittsburg, Cincinnati, Chicago & St. Louis	22.39	28,500	638,115				7.47	4,500	33,615	22.39	5,000	111,950	2,445	786,125	$2,157,568
	100.71		1,739,403				23.26		86,970	100.71		833,520	6,675		
Marion county:															
Belt	9.55	150,000	1,432,500	9.39	100,000	939,000	5.96	80,000	476,800	9.55	6,000	57,300	4,400	2,910,000	
Cincinnati, Hamilton & Indianapolis	10.57	31,200	329,784				6.46	5,000	32,300	10.57	2,500	26,425	10,175	398,684	
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	29.43	28,190	826,983				22.13	4,000	88,520	29.43	4,500	132,435	15,150	1,063,088	
Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis division	14.05	27,900	391,995	2.44	8,000	19,520	20.72	4,000	82,880	14.05	4,500	63,225	91,470	649,090	
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division	8.69	28,700	249,403				4.24	4,000	16,960	8.69	4,500	39,105	515	305,983	
Indianapolis, Decatur & Western	9.15	15,700	143,655				7.17	4,000	28,680	9.15	2,500	22,875	51,900	247,110	
Indianapolis Union	.92	1,500,000	1,380,000	.92	600,000	552,000	3.16	200,000	632,000				500,000	3,064,000	
Indianapolis & Vincennes	11.89	19,400	280,666				.84	2,500	2,100	11.89	1,300	15,457	225	248,448	
Lake Erie & Western	13.06	14,000	182,840				6.83	3,000	20,490	13.06	2,700	35,262	27,050	265,642	
Louisville, New Albany & Chicago	10.26	17,100	175,446				.53	3,500	1,855	10.26	3,100	31,806	365	209,472	
Peoria & Eastern—Western division	8.71	27,000	235,170				12.03	3,500	42,105	8.71	2,700	23,517	11,350	312,142	
Peoria & Eastern—Eastern division	8.76	22,700	198,852				1.42	3,500	4,970	8.76	2,700	23,652		227,474	
Pittsburg, Cincinnati, Chicago & St. Louis	19.44	28,500	554,040				22.81	4,500	102,645	19.44	5,000	97,200	109,385	863,270	
Terre Haute & Indianapolis	9.17	21,800	199,906				15.61	3,500	54,635	9.17	9,800	89,866	15,862	360,269	
White River	.46	25,000	11,500				.80	25,000	20,000					31,500	
	164.11		6,543,740	12.75		1,510,520	130.71		1,606,940	162.73		658,125	837,847		11,156,172
591 Marshall county:															
Baltimore & Ohio & Chicago	21.15	26,100	552,015				3.11	3,500	10,885	21.15	3,500	74,025	1,970	638,895	
Lake Erie & Western	24.30	14,000	340,200				2.15	3,000	6,450	24.30	2,700	65,610	640	412,900	

New York, Chi-

Lake Erie & Western	24.30	14,000														
New York, Chicago & St. Louis	22.52	28,900	650,828				4.04	4,500	18,180	22.52	4,930	110,348	1,280	780,636		
Pittsburg, Ft. Wayne & Chicago	22.09	57,500	1,270,175				5.85	5,000	29,250	22.09	9,500	209,855	7,950	1,517,230		
Terre Haute & Logansport	23.07	12,700	292,989				2.94	3,000	8,820	23.07	2,100	48,447	1,015	351,271		
	113.13		3,106,207				18.09		73,585	113.13		508,285	12,855			$3,700,932
Martin county:																
Evansville & Richmond	14.10	10,100	142,410				.49	3,000	1,470				100	143,980		
Ohio & Mississippi	19.49	23,200	452,168				2.37	4,000	9,480	19.49	3,000	58,470	2,320	522,438		
	33.5		594,578				2.86		10,950	19.49		58,470	2,420			666,418
Miami county:																
Chicago & Erie	.35	29,660	10,360				.06	5,000	300	.35	3,500	1,225		11,885		
Eel River	14.16	13,100	185,496				1.78	3,000	5,340	14.16	2,900	41,064	3,615	235,515		
Lake Erie & Western	32.60	14,000	456,400				9.12	3,000	27,360	32.60	2,700	88,020	11,245	583,025		
Peru & Detroit	7.26	6,100	44,286				.14	2,000	280	7.26	2,900	21,054		65,620		
Pittsburg, Cincinnati, Chicago & St. Louis	17.45	28,500	497,325				3.61	4,500	16,245	17.45	5,000	87,250	2,815	603,635		
Wabash	12.40	22,700	281,480				9.92	4,000	39,680	12.40	2,900	35,960	10,265	367,385		
	84.22		1,475,347				24.63		89,205	84.22		274,573	27,940			1,867,065
Monroe county:																
Gosport branch, L. & V.	2.82	10,900	30,738				.13	2,500	325	2.82	1,300	3,666		34,729		
592 Louisville, New Albany & Chicago	29.22	17,100	499,662				11.94	3,500	41,790	29.22	3,100	90,582	2,830	634,864		
	32.04		530,400				12.07		42,115	32.04		94,248	2,830			669,593
Montgomery county:																
Louisville, New Albany & Chicago	25.87	17,100	442,377				3.27	3,500	11,445	25.87	3,100	80,197	1,630	535,649		
Midland	21.39	5,800	124,062				.75	1,500	1,125	21.39	800	17,112	1,045	143,344		
Peoria & Eastern—Western division	23.96	27,000	646,920				5.11	3,500	17,885	23.96	2,700	64,692	1,550	731,047		
Terre Haute & Logansport	32.15	12,700	408,305				4.08	3,000	12,240	32.15	2,100	67,515	1,390	489,450		
Toledo, St. Louis & Kansas City	15.90	12,500	198,750				1.54	3,500	5,390	15.90	2,200	34,980	550	239,670		
	119.27		1,820,414				14.75		48,085	119.27		264,496	6,165			2,139,160
Morgan county:																
Fairland, Franklin & Martinsville	12.55	6,400	80,320				1.83	2,000	3,660	12.55	4,500	56,475	570	141,025		
Indianapolis & Vincennes	27.65	19,400	536,410				2.11	2,500	5,275	27.65	1,300	35,945	1,070	578,700		
	40.20		616,730				3.94		8,935	40.20		92,420	1,640			719,725
Newton county:																
Chicago & Indiana Coal	42.15	20,000	843,000				5.01	3,000	15,000	42.15	6,000	252,900	3,395	1,114,325		
Cincinnati, Lafayette & Chicago	1.43	31,900	45,617							1.43	4,500	6,435		52,052		
Indiana, Illinois & Iowa	1.86	7,000	13,020							1.86	1,000	1,860		14,880		

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Louisville, New Albany & Chicago	6.72	$17,100	$114,912	.....	.....	.....	.50	$3,500	$1,750	6.72	$3,100	$20,832	$480	$137,974	
Pittsburgh, Cincinnati, Chicago & St. Louis	13.54	28,500	385,890	.....	.....	.....	2.46	4,500	11,070	13.54	5,000	67,700	2,710	467,370	
	65.70	.....	1,402,439	.....	.....	.....	7.97	.....	27,850	65.70	.....	349,727	6,585		$1,786,601
Noble county:															
Baltimore & Ohio & Chicago	24.69	26,100	644,409	.....	.....	.....	3.27	3,500	11,445	24.69	3,500	86,415	5,530	747,799	
Eel River	3.59	13,100	47,029	.....	.....	.....	1.17	3,000	3,510	3.59	2,900	10,411	170	61,120	
Grand Rapids & Indiana	21.62	15,600	337,272	.....	.....	.....	2.85	3,500	9,975	21.62	3,000	64,860	5,875	417,982	
Lake Shore & Michigan Southern	24.73	40,500	1,001,565	4.06	$9,000	$36,540	13.32	4,000	53,280	24.73	5,500	136,015	8,350	1,235,750	
	74.63	.....	2,030,275	4.06	.....	36,540	20.61	.....	78,210	74.63	.....	297,701	19,925		2,462,651
Ohio county:															
(None.)															
593 Orange county:															
Louisville, New Albany & Chicago	9.59	17,100	163,989	.....	.....	.....	.82	3,500	2,870	9.59	3,100	29,729	1,065	197,653	
Orleans, West Baden & French Lick	17.70	7,200	127,440	.....	.....	.....	1.65	1,500	2,475	17.70	3,100	54,870	2,255	187,040	
	27.29	.....	291,429	.....	.....	.....	2.47	.....	5,345	27.29	.....	84,599	3,320		384,693
Owen county:															
Evansville & Indianapolis	5.75	11,800	67,850	.....	.....	.....	1.45	2,000	2,900	5.75	500	2,875	135	73,760	
Indianapolis & Vincennes	23.94	19,400	464,436	.....	.....	.....	3.23	2,500	8,075	23.94	1,300	31,122	1,795	505,428	
Gosport branch, I. & V	1.49	10,900	16,241	.....	.....	.....	.....	.....	.....	7.49	1,300	1,937	.....	18,178	
Louisville, New Albany & Chicago	11.19	17,100	191,349	.....	.....	.....	1.52	3,500	5,320	11.19	3,100	34,689	2,315	233,673	
	42.37	.....	739,876	.....	.....	.....	6.20	.....	16,295	42.37	.....	70,623	4,245		831,039
Parke county:															
Chicago & Indiana Coal	26.08	20,000	521,600	.....	.....	.....	12.35	3,000	37,050	26.08	6,000	156,480	2,590	717,720	
Evansville, Terre Haute & Chicago	4.16	18,000	74,880	.....	.....	.....	1.76	3,500	6,160	4.16	6,000	24,960	200	106,200	
Indianapolis, Decatur & Western	20.89	15,700	327,973	.....	.....	.....	3.00	4,000	12,000	20.89	2,500	52,225	1,300	393,498	
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division	1.07	28,700	30,709	.....	.....	.....	3.49	4,000	13,960	1.07	4,500	4,815	330	49,814	

Terre Haute & Logansport	23.43	12,700	297,561				15.12	3,000	45,360	23.43	2,100	49,203	2,610	394,734	
Toledo, St. Louis & Kansas City	.38	12,500	4,750				.16	3,500	560	.38	2,200	836		6,146	
	76.01		1,257,473				35.88		115,090	76.01		288,519	7,030		1,668,112
594 Perry county:															
Louisville, Evansville & St. Louis	8.41	15,100	126,991				.74	3,500	2,590	8.41	2,500	21,025	750	151,356	
	8.41		126,991				.74		2,590	8.41		21,025	750		151,356
Pike county:															
Evansville & Indianapolis	13.83	11,800	163,194				2.78	2,000	5,560	13.83	500	6,915	380	176,049	
Louisville, Evansville & St. Louis	14.89	15,100	224,839				2.23	3,500	7,805	14.89	2,500	37,225	790	270,659	
	28.72		388,033				5.01		13,365	28.72		44,140	1,170		446,708
Porter county:															
Baltimore & Ohio & Chicago	16.59	26,100	432,999				4.09	3,500	14,315	16.59	3,500	580,605	2,170	507,549	
Chicago & Erie	16.62	29,600	491,952				2.92	5,000	14,600	16.62	3,500	58,170	1,000	565,722	
Chicago & Grand Trunk	15.08	32,100	484,068				3.90	4,500	17,550	15.08	4,500	67,860	7,900	577,378	
Chicago & Indiana Coal	3.22	20,000	64,400				.13	3,000	390	3.22	6,000	19,320	40	84,150	
Elgin, Joliet & Eastern	4.58	19,600	89,768				.94	3,500	3,290	4.58	2,000	9,160		102,218	
Lake Shore & Michigan Southern	15.57	40,500	630,585	2.31	9,000	20,790	4.49	4,000	17,960	15.57	5,500	85,635	2,640	757,610	
Michigan Central	17.04	18,000	306,720	17.04	10,000	170,400	5.43	3,500	19,005	17.04	4,100	69,864	2,910	568,899	
New York, Chicago & St. Louis	16.97	28,900	490,433				1.98	4,500	8,910	16.97	4,900	83,153	1,290	583,786	
Pittsburg, Cincinnati, Chicago & St. Louis	15.48	28,500	441,180				2.23	4,500	10,035	15.48	5,000	77,400	2,145	530,760	
Pittsburg, Ft. Wayne & Chicago	16.47	57,500	947,025				5.11	5,000	25,550	16.47	9,500	156,465	18,200	1,147,240	
	137.62		4,379,130	19.35		191,190	31.22		131,605	137.62		685,092	38,295		5,425,312
Posey county:															
Evansville & Terre Haute	25.61	16,400	420,004				3.27	3,500	11,445	25.61	6,500	166,465	1,650	599,564	
Louisville & Nashville	20.81	19,700	409,957				2.09	4,000	8,360	20.81	2,000	41,620	1,470	461,307	
Peoria, Decatur & Evansville	24.83	13,800	342,654				2.56	3,000	7,680	24.83	3,000	74,490	475	425,299	
	71.25		1,172,615				7.92		27,485	71.25		282,575	3,495		1,486,170
Pulaski county:															
Chicago & Erie	4.36	29,600	129,056				2.00	5,000	10,000	4.36	3,500	15,260	800	155,115	
Louisville, New Albany & Chicago	17.95	17,100	306,945				.86	3,500	3,010	17.95	3,100	55,645	550	366,150	
Pittsburgh, Cincinnati, Chicago & St. Louis	21.21	28,500	604,485				2.88	4,500	12,960	21.21	5,000	106,050	1,760	725,255	
	43.52		1,040,486				5.74		25,970	43.52		176,955	3,110		1,246,521
595 Putnam county:															
Indianapolis, Decatur & Western	17.28	15,700	271,296				1.55	4,000	6,200	17.28	2,500	43,200	650	321,346	
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division	19.37	28,700	555,919				3.24	4,000	12,960	19.37	4,500	87,165	1,825	657,869	

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Louisville, New Albany & Chicago	32.28	$17,100	$551,988				5.34	$3,500	$18,690	32.28	$3,100	$100,068	$2,135	$672,881	
Terre Haute & Indianapolis	21.13	21,80	460,634				7.18	3,500	25,130	21.13	9,800	207,074	2,170	695,008	
	90.06		1,839,837				17.31		62,980	90.06		437,507	6,780		$2,347,104
Randolph county:															
Cincinnati, Richmond & Ft. Wayne	21.79	18,000	392,220				3.03	4,000	12,120	21.79	3,000	65,370	2,700	472,410	
Cleveland, Cincinnati, Chicago & St. Louis—Indianapolis div.	21.86	27,900	609,894				5.00	4,000	20,000	21.86	4,500	98,370	3,935	732,199	
Peoria & Eastern—Eastern div	23.65	22,700	536,855				3.43	3,500	12,005	23.65	2,700	63,855	1,200	613,915	
Pittsburgh, Cincinnati, Chicago & St. Louis	15.87	28,500	452,295				2.99	4,500	13,455	15.87	5,000	79,350	1,910	547,010	
	83.17		1,991,264				14.45		57,580	83.17		306,945	9,745		2,365,534
Ripley county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	9.75	28,100	273,975				2.78	4,000	11,120	9.75	4,500	43,875	2,245	331,215	
Ohio & Mississippi	21.14	23,200	490,448				3.74	4,000	14,960	21.14	3,000	63,420	1,945	570,773	
	30.89		764,423				6.52		26,080	30.89		107,295	4,190		901,988
Rush county:															
Cincinnati, Wabash & Michigan	14.23	7,700	109,571				.51	3,000	1,520	14.23	2,500	35,575	450	147,126	
Cincinnati, Hamilton & Indianapolis	18.35	31,200	572,520				2.93	5,000	14,650	18.35	2,500	45,875	2,725	635,770	
Pittsburg, Cincinnati, Chicago & St. Louis	20.94	28,500	596,790				1.47	4,500	6,615	20.94	5,000	104,700	530	708,635	
Ft. Wayne, Cincinnati & Louisville	12.87	15,300	196,911				1.45	3,000	4,350	12.87	1,600	20,592	950	222,803	
Vernon, Greensburg & Rushville	10.79	7,500	80,925				1.02	2,000	2,040	10.79	4,500	48,555	680	132,200	
	77.18		1,556,717				7.38		29,185	77.18		255,297	5,335		1,846,534
Scott county:															
Ohio & Mississippi	9.25	23,200	214,600				.74	4,000	2,960	9.25	3,000	27,750	725	246,035	

Pittsburg, Cincinnati, Chicago & St. Louis	12.09	28,500	344,565				1.48	4,500	6,660	12.09	5,000	60,450	1,870	413,545	
	21.34		559,165				2.22		9,620	21.34		88,200	2,595		659,580
Shelby county:															
Cincinnati, Hamilton & Indianapolis	8.82	31,200	275,184				1.30	5,000	6,500	8.82	2,500	22,050	1,075	304,809	
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	22.84	28,100	641,804				5.28	4,000	21,120	22.84	4,500	102,780	2,400	768,104	
Pittsburg, Cincinnati, Chicago & St. Louis	20.79	28,500	592,515				1.96	4,500	8,820	20.79	5,000	103,950	2,000	707,285	
Fairland, Franklin & Martinsville	5.71	6,400	36,544				1.99	2,000	3,980	5.71	4,500	25,695		66,219	
	58.16		1,546,047				10.53		40,420	58.16		254,475	5,475		1,846,417
Spencer county:															
Louisville, Evansville & St. Louis	41.46	15,100	626,046				2.49	3,500	8,715	41.46	2,500	103,650	1,225	738,411	
	41.46		626,046				2.49		8,715	41.46		103,650	1,225		738,411
597 Starke county:															
Chicago & Erie	18.20	29,600	538,720				2.97	5,000	14,850	18.20	3,500	63,700	1,225	618,495	
Indiana, Illinois & Iowa	18.08	7,000	126,560				2.97	2,000	5,940	18.08	1,000	18,080	1,275	151,855	
Louisville, New Albany & Chicago	5.73	17,100	97,983				.63	3,500	2,205	5.73	3,100	17,763	275	118,226	
New York, Chicago & St. Louis	15.05	28,900	434,945				2.33	4,500	10,485	15.05	4,900	73,745	875	520,050	
Pittsburg, Cincinnati, Chicago & St. Louis	8.51	28,500	242,535				1.92	4,500	8,640	8.51	5,000	42,550	1,600	295,325	
Pittsburg, Ft. Wayne & Chicago	12.47	57,500	717,025				3.25	5,000	16,250	12.47	9,500	118,465	1,625	853,365	
	78.04		2,157,768				14.07		58,370	78.04		334,303	6,875		2,557,316
Steuben county:															
Ft. Wayne & Jackson	19.05	14,800	281,940				2.31	3,000	6,930	19.05	5,500	104,775	2,400	396,045	
	19.05		281,940				2.31		6,930	19.05		104,775	2,400		396,045
St. Joseph county:															
Baltimore & Ohio & Chicago	3.02	26,100	78,822				2.28	3,500	7,980	3.02	3,500	10,570	2,155	99,527	
Chicago & Grand Trunk	25.67	32,100	824,007				5.66	4,500	25,470	25.67	4,500	115,515	9,000	973,992	
Cincinnati, Wabash & Michigan	4.18	7,700	32,186				.48	3,000	1,440	4.18	2,500	10,450	100	44,176	
Indiana & Lake Michigan	14.24	8,000	113,920				1.77	1,500	2,655				30	116,605	
Lake Erie & Western	4.13	14,000	57,820				.48	3,000	1,440	4.13	2,700	11,151	10	70,421	
Lake Shore & Michigan Southern	24.57	40,500	995,085	6.26	9,000	56,340	16.13	4,000	64,520	24.57	5,500	135,135	13,650	1,264,730	
Michigan Air Line	6.06	7,900	47,874				1.58	2,500	3,950	6.06	4,100	28,846	2,550	79,220	
598 Terre Haute & Logansport	13.72	12,700	174,244				2.57	3,000	7,710	13.72	2,100	28,812	915	211,681	
	95.59		2,323,958	6.26		56,340	30.35		115,165	95.59		336,479	28,410		2,860,352

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Sullivan county:															
Evansville & Terre Haute	40.11	$16,400	$657,804				7.17	$3,500	$25,095	40.11	$6,500	$2-0,715	$2,025	$945,639	
Indiana & Illinois Southern	21.25	6,900	210,375				.67	2,000	1,340	21.25	600	12,750	25	224,490	
Island coal branch, I. & V.	2.02	11,700	23,634				2.86	3,000	8,580	2.02	1,300	2,626		34,840	
	63.38		891,813				10.70		35,015	63.38		276,091	2,050		$1,204,969
Switzerland county: (None.)															
Tippecanoe county:															
Cleveland, Cincinnati, Chicago & St. Louis—Chicago division	18.33	28,100	515,073				6.86	4,000	27,440	18.33	4,500	82,485	7,535	632,533	
Lake Erie & Western	25.90	14,000	363,440				8.25	3,000	24,750	25.96	2,700	70,092	6,875	465,157	
Louisville, New Albany & Chicago	26.37	17,100	450,927				8.10	3,500	28,350	26.37	3,100	81,747	6,905	567,929	
Toledo, St. Louis & Kansas City	6.65	12,500	83,125				.72	3,500	2,520	6.65	2,200	14,630	150	100,425	
Wabash	27.01	22,700	613,127				13.88	4,000	55,520	27.01	2,900	78,329	30,430	777,406	
	104.32		2,025,692				37.81		138,580	104.32		327,283	51,895		2,543,450
Tipton county:															
Lake Erie & Western	33.78	14,000	472,920				6.17	3,000	18,510	33.78	2,700	91,206	1,945	584,581	
Pittsburg, Cincinnati, Chicago & St. Louis	11.56	28,500	329,460				1.03	4,500	4,635	11.56	5,000	57,800	190	392,085	
	45.34		802,380				7.20		23,145	45 34		149,006	2,135		976,666
Union county:															
Cincinnati, Hamilton & Indianapolis	16.32	31,200	509,184				2.06	5,000	10,300	16.32	2,500	40,800	3,695		
	16.32		509,184				2.06		10,300	16.32			3,695		563,979
599 Vanderburgh county:															
Evansville Belt	4.45	15,000	57,850				3.60	6,000	21,600					79,450	
Evansville & Indianapolis	7.91	11,800	93,338				.08	2,000	160	7.91	500	3,955		97,453	
Evansville & Terre Haute	14.02	16,400	229,928				9.26	3,500	32,410	14.02	6,500	91,130	28,250	381,718	
Evansville, Suburban & Newburg	7.50	9,900	74,250				.75	2,500	1,875	7.50	4,000	30,000	500	106,625	
Louisville, Evansville & St. Louis	6.51	15,100	98,301				2.64	3,500	9,240	6.51	2,500	16,275	4,200	128,016	

Louisville & Nashville	7.52	19,700	148,144				13.14	4,000	52,560	7.52	2,000	15,040	118,780	334,524	
Ohio Valley	4.22	10,600	44,732				.12	2,000	240	4.22	2,000	8,440		53,412	
Peoria, Decatur & Evansville	12.89	13,800	177,882				2.51	3,000	7,530	12.89	3,000	38,670	10,000	234,082	
Henderson Bridge Company	9.46	66,000	624,360				.65	5,000	3,250				50	627,660	
	74.48		1,548,785				32.75		128,865	60.57		203,510	161,780		2,042,940
Vermillion county:															
Evansville, Terre Haute & Chicago	34.54	18,000	621,720				13.73	3,500	48,055	34.54	6,000	207,240	2,425	879,440	
Indianapolis, Decatur & Western	9.24	15,700	145,068				.89	4,000	3,560	9.24	2,500	23,100	1,100	172,828	
Peoria & Eastern—Western division	2.19	27,000	59,130							2.19	2,700	5,913		65,043	
Toledo, St. Louis & Kansas City	6.85	12,500	85,625				2.00	3,500	7,000	6.85	2,200	15,070	550	108,245	
	52.82		911,543				16.62		58,615	52.82		251,323	4,075		1,225,556
600 Vigo county:															
Chicago & Indiana Coal	4.80	20,000	96,000				2.71	3,000	8,130	4.80	6,000	28,800	120	133,050	
Evansville & Indianapolis	13.71	11,800	161,778				2.58	2,000	5,160	13.71	500	6,855	135	173,925	
Evansville, Terre Haute & Chicago	4.47	18,000	80,460				5.65	3,500	19,775	4.47	6,000	26,820	6,615	133,670	
Evansville & Terre Haute	15.16	16,400	248,624				7.87	3,500	27,545	15.16	6,500	98,540	1,500	376,209	
Indiana Block Coal	8.64	5,700	49,248				2.01	2,500	5,025	8.64	6,000	51,840	100	106,213	
Terre Haute & Indianapolis	16.14	21,800	351,852				22.61	3,500	77,035	16.14	9,800	158,172	30,070	617,129	
Terre Haute & Logansport	11.12	12,700	141,224				.08	3,000	240	11.12	2,100	23,352		164,816	
Cleveland, Cincinnati, Chicago & St. Louis—St. Louis division	22.40	28,700	645,463				11.99	4,000	47,960	22.49	4,500	101,205	11,695	806,323	
	96.53		1,774,649				54.90		190,870	96.53		495,584	50,235		2,511,338
Wabash county:															
Chicago & Erie	16.30	29,600	482,480				2.42	5,000	12,100	16.30	3,500	57,050	2,950	554,580	
Cincinnati, Wabash & Michigan	31.36	7,700	241,472				7.36	3,000	22,080	31.36	2,500	78,400	6,875	348,827	
Eel River	15.68	13,100	205,408				5.22	3,000	15,660	15.68	2,900	45,472	3,835	270,375	
Wabash	17.10	22,700	388,170				3.24	4,000	12,960	17.10	2,900	49,590	7,940	458,660	
	80.44		1,317,530				18.24		62,800	80.44		230,512	21,600		1,632,442
Warren county:															
Chicago & Indiana Coal	13.16	20,000	263,200				2.24	3,000	6,720	13.16	6,000	78,960	280	349,160	
Peoria & Eastern—Western division	4.7	27,000	134,190				.96	3,500	3,360	4.97	2,700	13,419		150,969	
Rantoul	8.22	10,300	84,666				.50	2,000	1,000	8.22	500	4,110	760	90,536	
Wabash	16.77	22,700	380,679				5.23	4,000	20,920	16.77	2,900	48,633	2,050	452,282	
	43.12		862,735				8.93		32,000	43.12		145,122	3,090		1,042,947

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.	Total of counties.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Warrick county:															
Evansville & Indianapolis	6.20	$11,800	$73,160				.41	$2,000	$820	6.20	$500	$3,100	$125	$77,205	
Evansville, Suburban & Newburg	3.40	9,900	33,660				.12	2,500	300	3.40	4,000	13,600		47,560	
Louisville, Evansville & St. Louis	22.28	15,100	336,428				2.56	3,500	8,960	22.28	2,500	55,700	775	401,863	
	31.88		443,248				3.09		10,080	31.88		72,400	900		$526,628
601 Washington county:															
Louisville, New Albany & Chicago	27.66	17,100	472,986				3.00	3,500	10,500	27.66	3,100	85,746	875		
	27.66		472,986				3.00		10,500	27.66		85,746	875		570,107
Wayne county:															
Cincinnati, Richmond & Fort Wayne	11.69	18,000	210,420				1.99	4,000	7,960	11.69	3,000	35,070	800	254,250	
Ft. Wayne, Cincinnati & Louisville	10.21	15,300	156,213				.83	3,000	2,490	10 21	1,600	16,336	950	175,989	
Whitewater division Cleveland, Cincinnati, Chicago & St. Louis	14.33	4,300	61,619				1.08	2,500	2,700	14.33	4,500	64,485	1,000	129,804	
Pittsburg, Cincinnati, Chicago & St. Louis	50.25	28,500	1,432,125				11.04	4,500	49,680	50.25	5,000	251,250	41,225	1,774,280	
	86.48		1,860,377				14.94		62,830	86.48		367,141	43,975		2,334,323
Wells county:															
Chicago & Erie	13.80	29,600	408,480				2.82	5,000	14,100	13.80	3,500	48,360	750	471,630	
Ft. Wayne, Cincinnati & Louisville	24.94	15,300	381,582				2.51	3,000	7,530	24.94	1,600	39,904	1,800	430,816	
Toledo, St. Louis & Kansas City	15.75	12,500	196,875				2.46	3,500	8,610	15.75	2,200	34,650	625	240,760	
	54.49		986,937				7.79		30,240	54.49		122,854	3,175		1,143,206
White county:															
Louisville, New Albany & Chicago	42.01	17,100	718,371				6.90	3,500	24,150	42.01	3,100	130,231	6,315	879,067	
602 Pittsburg, Cincinnati, Chicago & St. Louis	27.15	28,500	773,775				2.40	4,500	10,800	27.15	5,000	135,750	1,850	922,175	
	69.16		1,492,146				9.30		34,950	69.16		265,981	8,165		1,801,242

Whitley county:															
Eel River	23.00	13,100	301,300				4.01	3,000	12,030	23.00	2,900	66,700	4,110	384,140	
New York, Chicago & St. Louis	18.15	28,900	524,535				4.60	4,500	20,700	18.15	4,900	88,935	925	635,095	
Pittsburg, Ft. Wayne & Chicago	17.18	57,500	987,850				3.44	5,000	17.200	17.18	9,500	163,210	3,950	1,172,210	
	58.33		1,813,685				12.05		49,930	58.33		318,845	8,985		2,191,445
Total	6,015.58		$127,149,232	159.37		$2,901,180	1,490.96		$6,646,355	5,873.83		$21,598,416	$2,514,392		$160,809,575

* Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

In arriving at the basis for the estimate of said values, the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same.

Tabulated Abstract of the Assessment of Property in Indiana for the Year 1891, *as the State Board of Tax Commissioners in its Work of Equalizing the*

Name of counties.	Acres.	Hundredths.	True value of lands.	True value of improvements.	True value of lands and improvements.	True average value of lands.	True average value of lands and improvements.	Number of city and town lots.	True value of lots.
Adams	212,972	60	$1,280,122	$983,326	$5,263,448	$20 09	$24 88	2,097	$405,598
Allen	401,182	73	9,256,185	2,131,425	11,387,610	23 07	28 38	14,376	9,602,220
Bartholomew	240,394	.....	6,672,550	754,340	7,426,890	26 65	29 66	.....	1,053,945
Benton	257,695	23	5,355,182	537,501	5,892,683	20 77	22 85	.....	223,857
Blackford	103,441	33	2,012,230	728,650	2,740,880	19 45	26 50	2,629	403,742
Boone	264,238	.....	7,349,651	947,357	8,297,008	27 38	31 40	.....	605,005
Brown	214,623	29	864,663	258,236	1,122,899	4 02	5 23	287	18,607
Carroll	233,746	18	6,325,576	1,268,421	7,593,997	27 06	32 52	3,533	357,790
Cass	287,747	32	6,282,780	1,104,905	7,387,685	24 37	28 66	.....	3,182,950
Clark	235,516	33	3,012,542	588,310	3,600,852	12 79	15 29	6,565	1,561,123
Clay	228,723	.....	4,525,522	918,974	5,444,496	19 79	23 80	6,478	785,910
Clinton	254,422	50	7,728,500	1,099,725	8,828,225	30 29	34 60	4,272	1,158,155
Crawford	192,928	.....	889,370	205,625	1,094,995	4 63	5 70	1,928	31,375
Daviess	271,018	36	4,754,272	1,049,490	5,803,762	17 54	21 41	4,835	813,181
Dearborn	193,610	78	3,271,703	690,244	3,961,947	16 89	20 46	.....	577,623
Decatur	232,554	20	5,537,745	694,300	6,232,045	23 81	26 80	3,065	431,225
De Kalb	226,940	26	5,962,875	893,495	6,856,370	26 27	30 21	5,742	953,005
Delaware	245,156	12	7,386,277	1,156,718	8,542,995	30 01	34 40	12,894	2,250,481
Dubois	270,679	81	2,156,620	377,510	2,534,130	7 98	9 35	3,225	239,520
Elkhart	289,321	06	6,721,100	1,431,660	8,152,760	23 23	28 17	9,243	2,657,020
604 Fayette	135,544	53	3,709,415	497,085	4,206,500	27 36	31 03	2,900	811,805
Floyd	89,225	89	1,974,745	668,665	2,643,410	22 13	29 63	8,480	3,714,295
Fountain	248,432	30	5,702,965	632,915	6,335,880	22 96	25 50	3,349	298,525
Franklin	243,404	10	3,798,390	673,885	4,472,275	15 48	18 22	2,369	228,445
Fulton	231,291	76	4,401,655	853,065	5,254,720	19 02	22 71	2,035	465,770
Gibson	301,328	61	6,649,692	1,024,904	7,674,596	22 08	25 49	.....	628,451
Grant	257,527	22	8,506,285	1,955,600	10,461,885	33 41	40 57	.....	2,796,880
Greene	339,497	.....	4,114,915	761,435	4,876,350	12 13	14 38	.....	243,895
Hamilton	254,201	75	9,306,340	1,423,960	10,730,300	36 98	42 32	3,526	660,430
Hancock	190,457	85	5,564,725	826,065	6,390,790	29 21	33 55	3,994	531,945
Harrison	300,008	75	2,566,335	635,668	3,202,003	8 55	10 67	1,142	86,938
Hendricks	254,934	46	7,234,132	957,308	8,191,440	28 38	32 13	2,671	192,606
Henry	245,510	94	7,544,270	1,135,540	8,679,810	30 72	35 35	4,896	681,820
Howard	185,981	98	5,209,445	977,735	6,187,180	28 07	33 34	6,735	1,078,985
Huntington	239,352	80	5,601,470	1,342,630	6,944,100	23 40	29 01	5,136	1,305,375
Jackson	317,653	83	3,469,685	641,885	4,111,570	10 92	12 94	4,071	574,220
Jasper	356,363	45	2,630,725	476,655	3,107,380	7 38	8 72	1,950	189,145
Jay	241,282	23	3,699,615	1,695,245	5,394,860	15 38	22 35	7,599	508,685
Jefferson	228,608	.....	2,587,444	598,539	3,185,983	11 31	13 93	.....	721,765
Jennings	231,621	77	2,123,087	401,720	2,524,807	9 16	10 90	2,166	131,685
Johnson	195,635	04	5,725,760	930,425	6,656,185	29 26	34 02	2,499	567,250
Knox	318,628	70	4,889,560	776,865	5,666,425	15 34	17 78	.....	1,195,925
Kosciusko	348,188	.....	8,311,488	1,314,293	9,625,781	24 57	28 46	5,985	598,501
Lagrange	238,196	50	4,409,295	983,225	5,392,520	18 51	22 63	1,855	189,880
Lake	302,119	68	7,723,005	1,611,945	9,334,050	25 56	30 88	33,938	1,468,450
La Porte	364,721	36	6,248,805	989,770	7,238,575	17 13	19 84	.....	1,835,090
Lawrence	283,480	21	2,727,660	487,433	3,215,093	9 62	11 34	3,417	358,714
Madison	286,483	99	9,863,520	1,469,105	11,332,625	34 42	39 55	.....	3,408,940
Marshall	276,761	11	5,731,775	905,060	6,636,835	20 72	23 98	1,998	412,760
Marion	233,660	03	12,315,336	2,401,413	14,716,749	52 76	62 98	.....	43,616,316
Martin	211,372	.....	1,284,810	360,875	1,645,685	6 07	7 78	.....	98,905
Miami	235,586	64	5,969,788	1,286,355	7,255,613	25 34	30 80	5,177	840,641
Monroe	261,831	36	2,375,905	558,715	2,934,620	9 07	11 20	.....	604,660
Montgomery	313,636	.....	8,603,614	1,575,585	10,179,199	27 43	32 77	.....	1,219,124
Morgan	253,046	.....	4,748,869	656,020	5,404,889	18 76	20 96	1,940	433,770
Newton	253,876	87	3,827,334	420,550	4,257,884	15 08	16 77	.....	120,266
Noble	256,174	78	7,020,933	1,299,903	8,320,836	27 40	32 48	4,480	623,951
Ohio	54,828	97	858,491	160,600	1,019,091	15 66	18 59	504	70,585
Orange	254,590	.....	1,583,968	471,458	2,055,426	6 68	8 50	1,550	63,531
Owen	244,783	07	2,535,900	591,560	3,127,460	10 13	12 41	1,920	198,410
605 Parke	280,496	48	5,963,115	821,120	6,784,235	21 25	24 18	2,415	159,770
Perry	227,386	12	898,200	231,270	1,129,560	3 95	4 96	9,015	294,265
Pike	209,791	.....	2,648,900	374,280	3,023,180	12 62	14 41	2,628	163,005
Porter	259,572	68	3,785,775	779,155	4,564,930	14 58	17 58	6,969	715,745
Posey	256,221	99	4,793,815	723,870	5,517,685	18 71	21 53	3,828	424,100
Pulaski	269,539	.....	2,015,455	361,110	2,376,565	7 50	8 84	1,504	103,400
Putnam	299,605	.....	6,929,785	1,065,480	7,995,265	23 13	26 68	.....	671,255
Randolph	287,704	60	7,181,340	1,059,100	8,240,440	24 96	28 64	5,147	584,135
Ripley	280,863	85	3,025,985	686,350	3,712,335	10 77	13 22	2,877	170,795

No. 5.

Reported to the Auditor of State by the County Auditors, and the Changes Ordered by Assessment of the Real Estate of the Several Counties in the State.

True value of improvements.	True value of lots and improvements.	True average value of lots.	True average value of lots and improvements.	True value of personal property.	Polls.	True total value of taxable property.	Action by State board of tax commissioners.			
							Per cent. of increase.	Per cent. of decrease.	Amount of increase.	Amount of decrease.
$486,125	$891,723	$193 41	$425 23	$2,070,283	3,350	$8,225,454	(a) 5	.....	$214,006	
6,662,730	16,264,950	667 93	113 39	7,873,275	11,148	35,525,835				
1,205,110	2,259,055	.....	.....	3,632,360	4,255	13,318,305				
388,698	612,555	.....	.....	1,957,099	2,181	8,462,337	(a) 5	.....	267,759	
323,530	727,272	153 91	276 63	1,078,295	1,744	4,546,447				
761,934	1,366,939	.....	.....	3,452,587	4,442	13,116,534				
41,593	60,200	61 03	152 21	617,940	1,479	1,801,039				
639,970	997,760	101 27	282 41	2,621,168	3,363	11,212,925	.....	(a) 5	.....	$316,278
1,660,155	4,843,105	.....	.....	3,784,440	5,530	16,015,230				
1,472,079	3,033,202	237 80	462 02	2,365,362	4,330	8,999,416	(a) 0	.....	903,762	
1,040,202	1,826,112	121 32	281 90	2,649,665	5,512	9,920,273				
1,075,565	2,233,720	271 10	522 87	3,646,405	4,777	14,708,350	.....	(a) 5	.....	386,425
129,295	160,670	16 27	83 54	758,410	2,231	2,014,075				
1,094,075	1,907,256	185 44	394 46	2,418,366	4,581	10,129,384				
1,449,650	2,026,673	.....	.....	3,999,107	3,141	9,087,727				
760,185	1,191,410	140 69	388 71	3,251,805	3,248	10,675,260	(a) 5	.....	276,887	
1,298,290	2,161,295	165 97	376 40	2,569,080	4,450	11,586,745	.....	(a) 5	.....	298,143
1,241,006	3,491,487	174 53	270 78	3,674,003	4,989	15,708,485				
447,620	687,140	74 27	213 06	1,518,620	2,973	4,739,890				
2,545,445	5,202,465	287 46	562 85	4,532,100	6,756	17,887,325	.....	(c) 10	.....	76,247
683,265	1,495,070	279 93	516 70	2,483,750	2,206	8,185,320				
3,898,800	7,613,095	438 00	897 75	4,324,295	3,535	14,579,800	.....	(a) 20	.....	394,949
657,290	955,815	89 14	285 40	2,654,135	3,270	9,945,830	.....	(a) 5	.....	285,148
565,930	794,375	96 43	335 32	2,632,520	2,762	7,899,170				
525,990	991,760	228 88	487 35	2,057,875	2,990	8,304,355				
1,006,097	1,634,548	.....	.....	3,469,122	4,174	12,778,266	.....	(a) 10	.....	664,969
1,651,440	4,448,320	.....	.....	4,457,480	5,754	19,367,685	.....	(a) 10	.....	850,628
542,380	786,275	.....	.....	2,705,910	4,126	8,368,535				
869,180	1,529,610	187 58	433 49	3,233,875	4,188	15,493,785	.....	(a) 10	.....	930,634
639,615	1,171,560	133 18	293 08	2,821,344	3,087	10,383,694				
275,583	362,521	76 12	317 45	1,712,206	3,220	5,276,730				
535,866	728,472	72 11	272 73	3,263,325	3,438	12,183,237				
984,620	1,666,440	139 26	340 37	4,170,440	3,977	14,516,690				
1,322,530	3,001,515	249 29	445 66	3,573,960	5,011	12,762,655				
1,371,700	2,677,075	254 16	521 23	3,230,560	4,993	12,851,735				
989,860	1,564,080	141 05	384 20	2,319,190	3,758	7,994,840	(a) 5	.....	173,484	
266,190	455,335	96 99	233 50	1,515,385	1,873	5,078,100	(a) 10	.....	263,072	
669,345	1,178,030	66 94	155 02	2,092,000	3,634	8,664,890	(a) 10	.....	369,961	
1,892,810	2,614,575	.....	.....	3,232,763	3,425	9,033,321	(a) 10	.....	258,744	
314,493	446,158	60 79	205 98	1,228,329	2,201	4,199,294				
877,470	1,444,720	226 99	578 11	3,616,955	3,308	11,717,860				
2,152,125	3,348,050	.....	.....	4,076,645	4,887	13,091,120	(a) 5	.....	244,478	
1,088,164	1,686,665	100 00	281 82	3,582,678	4,812	14,895,124				
370,355	560,235	119 55	331 32	2,689,785	2,620	8,642,540	(a) 10	.....	440,928	
730,765	2,199,215	48 57	64 80	2,729,710	3,391	14,262,975				
2,561,930	4,397,020	.....	.....	3,962,955	4,970	15,598,550	(a) 5	.....	312,440	
733,768	1,092,482	105 00	319 72	2,286,209	3,131	6,593,784	(a) 5	.....	136,383	
2,066,775	5,475,715	.....	.....	4,292,080	6,017	21,100,420	.....	(a) 10	.....	986,352
620,425	1,033,185	206 58	517 10	2,470,200	3,957	10,140,229				
27,348,331	79,964,647	.....	.....	27,809,003	29,398	113,490,399				
200,680	239,585	.....	.....	966,245	2,082	2,911,515				
914,875	1,755,516	58 35	181 42	3,291,418	4,594	12,302,577	(d) 10	.....	130,386	
802,215	1,406,875	.....	.....	2,055,900	2,756	6,397,395	(a) 5	.....	118,795	
1,564,512	2,783,636	.....	.....	5,037,656	4,928	18,090,491				
547,100	980,870	223 59	505 60	2,286,592	3,046	8,672,351				
287,680	407,946	.....	.....	1,300,088	1,407	5,965,918	.....	(a) 5	.....	191,366
1,095,582	1,719,533	139 27	383 60	3,470,654	3,962	13,511,023	.....	(a) 10	.....	702,093
225,815	306,400	140 05	607 95	608,676	769	1,934,167				
184,196	247,727	22 35	92 89	1,427,944	2,476	3,731,097				
387,650	586,060	94 00	574 57	1,681,490	2,374	5,395,610				
403,590	563,360	66 15	243 27	2,733,075	3,437	10,080,670				
558,945	853,210	32 64	94 64	1,103,520	2,733	3,086,290	(a) 10	.....	89,829	
315,000	478,005	62 02	181 88	1,754,720	3,304	5,255,905				
866,130	1,581,875	102 70	226 98	1,975,935	2,864	8,122,740	(a) 5	.....	189,388	
968,510	1,393,610	110 78	364 05	2,960,475	3,351	9,871,770	.....	(a) 10	.....	479,381
202,795	306,195	68 75	203 52	996,450	1,707	3,679,210	(a) 5	.....	100,772	
1,235,345	1,906,600	.....	.....	3,931,945	3,510	13,833,810				
1,040,315	1,624,450	113 49	315 60	3,938,760	4,966	13,803,650	(a) 10	.....	718,134	
375,970	546,765	59 37	190 05	1,768,685	2,953	6,027,785	(a) 5	.....	151,299	

Table No

Name of counties.	Acres.	Hundredths.	True value of lands.	True value of improvements.	True value of lands and improvements.	True average value of lands.	True average value of lands and improvements.	Number of city and town lots.	True value of lots.
Rush	254,338	46	$8,739,530	$969,745	$9,709,275	$34 36	$38 17	.....	$458,070
Scott	119,021	53	1,055,280	200,858	1,256,138	8 86	10 05	1,146	34,357
Shelby	255,231	70	8,931,420	1,110,260	10,041,680	34 25	39 34	.....	1,187,605
Spencer	249,455	65	2,717,810	656,540	3,374,350	10 90	13 52	3,603	181,790
Starke	189,500	.....	901,455	191,214	1,092,669	4 75	5 76	2,449	65,690
Steuben	193,426	55	3,647,085	637,025	4,284,110	18 85	22 15	2,644	226,360
St. Joseph	286,429	36	5,858,450	974,950	6,834,400	20 49	23 90	.....	4,691,330
Sullivan	280,880	62	4,518,764	8 6,571	5,325,335	16 08	18 95	.....	358,423
Switzerland	140,979	98	2,016,730	473,010	2,489,740	14 30	17 66	1,245	321,415
Tippecanoe	312,788	92	8,980,215	1,586,740	10,566,955	28 71	33 78	10,773	3,675,200
Tipton	164,158	.....	4,467,600	440,860	4,908,460	27 21	29 90	2,301	297,467
Union	104,429	96	2,786,425	422,645	3,209,070	26 68	30 72	847	119,390
Vanderburgh	146,988	00	4,919,625	1,016,910	5,936,535	33 47	40 46	15,580	9,363,920
Vermillion	157,970	9–	3,000,555	407,625	3,408,180	18 99	21 57	2,647	208,395
Vigo	251,426	54	6,026,765	977,205	7,003,970	28 97	27 25	.....	7,495,535
Wabash	258,570	75	6,732,845	1,592,060	8,324,905	26 05	32 19	4,988	1,201,020
Warren	229,753	72	4,849,766	735,117	5,584,883	21 10	24 20	1,314	53,310
Warrick	251,866	53	2,950,225	680,205	3,589,430	11 71	14 21	2,415	216,555
Washington	326,722	91	2,926,570	579,025	3,505,595	8 96	10 73	1,353	180,860
606 Wayne	250,692	43	7,532,954	1,715,810	9,248,764	30 04	36 89	.....	3,557,425
Wells	233,453	.....	5,453,270	994,375	6,447,645	23 36	27 62	2,496	465,835
White	318,327	39	4,997,663	786,209	5,783,872	15 69	18 16	.....	262,386
Whitley	210,671	06	5,775,070	778,170	6,551,240	27 49	31 09	2,382	382,280
Total	.....	.....	450,522,648	80,045,835	530,568,483	.....	.....	.....	139,980,734

(*a*) On lands only.
(*b*) On improvements on lands only.
(*c*) On lots in Elkhart city only.
(*d*) On lots and improvements in Peru city only.
(*e*) On lands only—except in Henry Creek township.
(*f*) On lots and improvements in Richmond city only.
(*g*) On lands and improvements in Evansville city only.
(*h*) On lands and improvements in Pigeon township, outside of Evansville city only.

5—Continued.

True value of improvements.	True value of lots and improvements.	True average value of lots.	True average value of lots and improvements.	True value of personal property.	Polls.	True total value of taxable property.	Action by State board of tax commissioners.			
							Per cent. of increase.	Per cent. of decrease.	Amount of increase.	Amount of decrease.
$771,100	$1,229,170	.....	.....	$3,774,390	$3,268	$14,712,835				
105,677	140,084	$29 99	$122 20	576,880	1,121	1,973,052				
1,048,265	2,235,870	354 08	666 66	3,479,885	4,162	15,757,385				
458,460	640,250	50 45	177 70	1,800,085	3,706	5,814,685				
84,420	150,110	26 82	61 29	427,518	1,217	1,670,297				
394,215	620,575	85 61	234 69	1,844,980	2,530	6,749,665	(a) 5	.....	$182,354	
3,507,390	8,198,720	.....	.....	6,665,900	8,174	21,698,920	(b) 5	.....	48,747	
621,483	979,906	.....	.....	2,935,668	3,904	9,240,910				
211,660	533,075	258 16	428 17	1,304,570	2,066	4,327,385				
3,565,960	7,041,160	341 41	653 60	5,942,775	5,963	23,550,890				
387,075	684,542	129 27	297 49	1,478,176	3,036	7,071,178				
218,190	337,580	140 36	398 55	1,386,885	1,173	4,933,535	(h) 10	.....	123,883	
6,730,880	16,091,800	601 02	1,083 42	8,382,260	8,542	30,413,595	(g) 20	.....	320,446	
505,435	712,830	78 72	269 29	1,771,500	2,369	5,892,510				
5,879,320	13,374,855	.....	.....	6,747,380	8,326	27,126,205	(e) 10	.....	527,065	
1,613,340	2,814,360	260 83	564 23	4,049,565	4,722	15,188,830				
140,590	193,900	40 58	147 56	1,786,983	1,907	7,565,766				
422,125	638,680	89 07	264 46	1,899,665	3,379	6,118,775				
343,365	524,225	133 67	387 52	2,185,985	2,997	6,215,805	(a) 10	.....	292,657	
3,104,190	6,661,615	.....	.....	7,778,043	6,329	23,688,422	(a) 5	.....	376,647	
							(f) 5	.....	286,872	
452,925	918,760	186 63	368 10	2,179,265	3,630	9,545,670	.....	.....	.....	
404,428	666,814	.....	.....	2,218,785	2,775	8,669,471	.....	.....	.....	
686,495	1,068,775	160 48	448 69	2,415,970	2,940	10,035,985	.....	(a) 10	.....	$577,307
126,489,642	266,470,376	.....	.....	288,586,346	367,838	1,085,625,205	.....	.....	7,519,178	7,139,920

Recapitulation.

Value of lands and improvements as returned by county auditors	$530,568,483	
Value of lots and improvements as returned by county auditors	266,470,376	
Net increase on lands, lots and improvements as made by State board of tax commissioners	379,258	
		$797,418,117
Value of personal property as returned by county auditors	288,586,346	
Increase in assessment of banks and other corporations made by State board of tax commissioners	1,743,861	
Increase in assessment of telegraph and telephone companies made by the State board of tax commissioners (estimated)	1,250,000	
Value of railroad property as fixed by State board of tax commissioners	160,809,575	
		452,389,782
Total value of taxables		$1,249,807,899

607 Thereupon the board adjourned until Wednesday, September 9, 1891, at 10 o'clock a. m.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOSEPH T. FANNING,
Secretary of the Board.

608 To the introduction of which evidence the defendants object. The court sustained the objection and the plaintiff now excepts.

And this was all the evidence given in said cause.

609 INDIANAPOLIS, IND., *Oct. 15th*, 1892.

I, William S. Garber, official reporter of the Marion circuit court for the above-entitled cause, duly appointed and qualified, hereby certify that the above and foregoing is a true and correct report of all the evidence, objections, rulings of the court and exceptions thereto given, heard, and taken on the trial of the above-entitled cause at the time and place aforesaid.

WILLIAM S. GARBER,
Official Reporter.

Which was all the evidence given in said cause.

And afterwards, on the 19th day of September, 1892, the court, being fully advised, rendered the following judgment, to which the plaintiff at the time excepted.

The court, being sufficiently advised, does find for the defendant upon the issues joined herein upon each and every one of the specifications contained in the complaint and does adjudge and decree that the plaintiff is entitled to no relief upon the averments of *his* complaint and the evidence in this case, and that the plaintiff's complaint be dismissed, and that the defendant recover of the plaintiff his costs herein expended, taxed at $—; to which judgment of the court the plaintiff excepts.

And thereupon the plaintiff filed the following motion and reasons for new trial, to wit:

610 STATE OF INDIANA, }
County of Marion. }

In the Marion Circuit Court.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Plaintiff,
vs.
VICTOR M. BACKUS, Treasurer, Defendant.

Motion and Reasons for New Trial.

The plaintiff moves the court for a new trial in this case for the following reasons:

1. Errors of law occurring at the trial and excepted to by this plaintiff, as follows, to wit:

1. Issue having been joined on the question whether the State board of tax commissioners of Indiana had adopted a rule or system of valuation of railroad track and rolling stock not at its true cash value, but according to the value of its franchises, the amount of its earnings from interstate commerce, the value of the stock issued by such company, and the amount of its bonded debt, and by and in pursuance of such rule assessed said railroad track and rolling stock of the plaintiff at a sum far higher than its true cash value and higher than other property in the State of Indiana is assessed for taxation; and issue having been joined upon the question whether said board had adopted a rule in arriving at a basis for the estimate of the value of the various railroads and parts of roads in Indiana by which they considered and took into account the market value of the stocks resting upon and representing railroad property, real and personal, wholly without the State of Indiana, the market value of bonds resting upon and secured by railroads without the State of Indiana, thereby discriminating against railroads partly within and partly without the State of Indiana and in favor of railroads wholly within the State of Indiana, and assessed the railroad track and rolling stock of plaintiff at a far higher sum than its true cash value, and at a far higher sum than the railroad track and rolling stock of railroad companies owning railroads wholly within the State of Indiana; and issue having been joined upon the question whether said board, in making such assessment of railroad track and arbitrarily fixing a valuation upon said track at a sum more than twice its cash value, knowing that real estate in the State of Indiana was assessed at not more than eighty per cent. of its cash value; and issue having been joined upon the question whether said board fixed a valuation upon plaintiff's railroad track and rolling stock at a sum that is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroad companies a greater burden of taxation than upon other property of equal value; and the question as to whether an excessive valuation had been placed upon plaintiff's property being material under all the specifications of the complaint, the court utterly excluded all evidence whatever as to the value of plaintiff's railroad track and rolling stock assessed by the State board of tax commissioners:

611

a. The court erred in refusing to permit witness H. P. Taussig, one of the experts produced by plaintiff, to testify as to the fair cash value per mile of the main track, including right of way, of the line between Templeton and the Illinois State line, in answer to Q. 31, p. 128.

612

b. The court erred in refusing to permit said witness to testify to the value of the Indianapolis division of said railway. Q. 36, p. 151.

c. The court erred in refusing to permit the plaintiff to prove that the main track of the Indianapolis division, 83.84 miles, was worth, on the first day of April, 1891, $8,096 per mile. P. 153.

d. The court erred in refusing to permit the plaintiff to prove by

said witness, in answer to Q. 37, that the St. Louis division, 80.47 miles, was worth $10,461 per mile.

e. The court erred in refusing to permit plaintiff to prove by said witness the value of the Chicago division, extending from Cincinnati to La Fayette, was worth, with its connections, on the first day of April, 1891, $7,256 per mile. Q. 38, p. 154.

f. The court erred in refusing to allow said witness to testify as to the value of the C., H. & G., in answer to Q. 42, and in rejecting plaintiff's offer to prove the main track of the road, April 1, 1891, was worth $5,776 per mile.

g. The court erred in refusing to permit said witness, in answer to Q. 44, to testify as to the value of the V., G. & R., and in refusing to allow the plaintiff to prove by said witness that the value of that track was worth, on the first day of April, 1891, $4,570 per mile.

h. The court erred in refusing to allow the plaintiff to prove by said witness the value of the side track of the C., L. & C. from Tempeton to the Illinois State line, in answer to Q. 45, p. 157, and in sustaining the objection to plaintiff's offer to prove it to be worth $2,625 per mile.

613 *i.* The court erred in sustaining the objection to Q. 46, as to the value of the second main track of the Indianapolis division, and in excluding the offer of plaintiff to prove that it was worth only $4,000 per mile.

j. The court erred in refusing to allow plaintiff to prove, in answer to Q. 47, p. 159, that the value of the side track of the Indianapolis division was $2,525 per mile.

k. That the value of the side track of the St. Louis division, Q. 48, was $2,625 per mile.

l. That the value of the side track of the Chicago division, Q. 49, was $2,625 per mile.

m. The court erred in sustaining the objection to Q. 50, as to the value of the railroad track of the Chicago division, including right of way, main track, second main and side track, and improvements on right of way, taking into consideration the termini and the condition of the roads and all considerations that would affect its value on the first day of April, 1891, and in refusing to permit plaintiff to prove by said witness that said value was $1,137,813.36.

n. The court erred in refusing to permit witness Joseph Ramsey, Jr., to answer question 9, to wit: "What was the cash value of the main track of the Indianapolis division of the C., C., C. & St. L. railroad in Indiana, considering it as a part of a railroad track from Indianapolis to Cleveland, and taking into consideration all other conditions that would affect the cash value thereof on the 1st day of April, 1891?" and in refusing to permit plaintiff to prove by said witness that the cash value of said road was $11,000 per mile.

614 *o.* The court erred in refusing to allow said witness to state the earning capacity per mile for the year 1890 and 1891 of the line owned by the C., C., C. & St. L. railroad, extending from Cincinnati to Cleveland, p. 344, and in rejecting plaintiff's offer to prove that the earning capacity of the railroad from Cincinnati to

Cleveland was: the Cleveland division, gross earnings, $16,400 per mile, and for the Cincinnati division $11,000 per mile.

p. The court erred in refusing to allow witness to answer Q. 17, as to the earning capacity of the St. Louis division of plaintiff's road during the years 1890 and 1891, and in rejecting the offer of plaintiff to prove that it was $8,000 per mile. P. 346.

q. The court erred in refusing to permit said witness to testify as to the value of terminal properties in Cincinnati, Columbus, and Cleveland, in the State of Ohio, owned by the plaintiff and embraced in the valuation represented by the stocks of said company, and in rejecting the offer of plaintiff to prove that the value of these terminals represented by these stocks was $6,000,000. P. 346.

r. The court erred in refusing to allow witness to answer the 19th question, p. 347, as to whether bonds of plaintiff covered the whole of its property or whether they are of a different series issued by the different roads out of which the consolidated corporation was formed and resting on different lines, and in rejecting plaintiff's offer to prove that the bonds of the plaintiff considered by the board in arriving at the basis of its estimate of valuation were issued in different series by the different companies of which
615 it was composed, and that these bonds rested upon separate lines and not upon the whole property of the plaintiff.

s. The court erred in refusing to allow plaintiff to prove by said witness Ramsey how many of the bonds of the C., C., C. & St. L. R'y Company rested upon property outside of the State of Indiana, p. 349, and in rejecting plaintiff's offer to prove that $26,000,424 rest upon lines wholly without the State of Indiana.

t. The court erred in refusing to allow witness Ramsey to answer Q. 21, as to the per cent. of the business of the St. Louis division derived from interstate transportation, p. 350, and in rejecting plaintiff's offer to prove that 75 % of the business of said division comes from transportation between interstate points.

u. The court erred in refusing to allow witness Ramsey to answer Q. 23 and in rejecting plaintiff's offer to prove that 80 % of the gross earnings of the St. Louis division are derived from transportation from points without the State to points within the State or from points within to points without or from through business passing through the State from points without to points without the State.

v. And the court erred in refusing to allow Mr. Ramsey to answer Q. 24 as to the per cent. of the gross earnings of the Chicago division derived from interstate commerce, and in rejecting plaintiff's offer to prove that 70 % to 75 % of said earnings are derived from interstate commerce.

w. The court erred in refusing to allow said witness to answer as to the length of the line from Cincinnati, O., to Cleveland, O., and in rejecting plaintiff's offer to prove that said line was 304 miles long.

616 2. Issue having been joined under the 4th specification of the complaint herein as to whether the State board of tax commissioners did arbitrarily and from mere will, from prejudice

and caprice, without having made personal inquiry or examination as to the value of said rolling stock and railroad track or caused such examination to be made, without having called before them any person who had knowledge touching the subject or caused any witness to be examined under oath, fix the valuation of plaintiff's railroad track and rolling stock at a sum which is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroads a greater burden of taxation than upon other property of equal value, and that the valuation placed by said board upon plaintiff's railroad track and rolling stock, as above set forth, was not the result of the honest judgment of said board, based upon their own knowledge or upon evidence or inquiry, but such valuation made by said board was willful and arbitrary and made with the fraudulent intent to increase the amount of taxes to be paid by this plaintiff in a much greater proportion than the increase of the amount of taxes to be paid by the owners of other property in the State of Indiana other than railroad property, this court utterly refused to hear evidence outside of the record made by the board and excluded evidence contained in said record tending to show that the action and conduct of said board was fraudulent and rejected material and competent and relevant evidence tending to show that said board acted arbitrarily and willfully, without knowledge and examination of plaintiff's property, with the fraud-
617 ulent intent of imposing a greater burden of taxation upon the plaintiff than upon other citizens owning property of equal value, to wit:

a. The court erred in refusing to allow Claude Matthews, one of the tax commissioners, to answer the following question: "Mr. Matthews, did you ever make any personal inspection of the lines of the Big Four for the purpose of examining as to the amount and character and physical condition of its tracks?" and in refusing to allow plaintiff to prove by said Mathews that he had never made any such inspection.

b. The court refused to permit plaintiff to prove by said Matthews that he had never made any inspection of the F., F. R. R.

c. Or of the C., H. & G. R. R.

d. Or of the V., G. & R. R. R.

e. The court erred in refusing to allow Mathews to answer whether any papers, books, or documents were before them, with reference to the amount, character, and value of the railroad track of the lines of the plaintiff, Q. 68, p. 28, and in refusing to allow plaintiff to prove by said witness that no books, paper-, or documents were before said board except Poor's Manuel and the Investors' Guide.

f. The court erred in sustaining the objection to Q. 69, as to whether they had before them or used Poor's Manuel for 1890, and in refusing to allow plaintiff to prove that they had that book before them.

g. The court erred in sustaining the objection to Q. 70, as to whether in assessing the C., C., C. & St. L. they did not have before them Poor's Manuel, 1890, pages 993, showing the lines owned and

leased by the C., C., C. & St. L. in the States of Ohio, Indiana,
618 and Illinois, with the termini and length of the various lines, and, if they did not use the information furnished as to the termini and length of the lines, in making the assessment and in refusing to allow plaintiff to prove said facts by said witness.

h. The court erred in refusing to allow witness Mathews to testify whether at the time the board had under consideration the fixing of the values of the property of the plaintiff it had before it Poor's Manuel for 1890, pages 994 and 995, showing the funded debt of said railroad, specifying the various mortgages upon the various lines of railroad controlled by it, as set out in Q. 71, p. 35, and in rejecting plaintiff's offer to show that such was the fact, p. 36.

i. The court erred in refusing to allow witness Mathews to testify, in answer to Q. 72, as to whether said board did not have before them Poor's Manuel, pages 994, 1890, showing that the plaintiff owned $5,000,000 of the capital stock of the C., V. & C. R'y Co. and a large amount of the capital stock of other railroad companies within and without the State of Indiana, and in rejecting plaintiff's offer to prove the amount of capital stock owned by said companies, as set forth in Poor's Manuel for 1890, before said board and used by them in making their assessment.

j. The court erred in refusing to allow said Mathews to answer Q. 73, as to whether they had before them Poor's Manuel, page 995, showing the length of the C., V. & C. R'y, and that it was a railroad wholly without the State of Indiana, having a capital stock of $5,000,000, owned by the C., C., C. & St. L. R'y Company, and in rejecting plaintiff's offer to prove the foregoing facts.

619 *k.* The court erred in refusing to allow said witness to testify, in answer to Q. 74, as to whether the board did not have before it as evidence pages 994 and 995 of Poor's Manuel, showing the gross earnings of the system, exclusive of the Peoria & Eastern and the C., V. & C., for the year ending June 30, 1889, were $11,453,992.66, and operating expenses $7,594,171.74, making net earnings $3,859,820.92, and in refusing to allow plaintiff to prove the foregoing facts.

l. The court erred in refusing to allow said witness to answer Q. 75, as to the earnings of the C., C., C. & St. L. for the six months ending December 31st, 1889, as showed by Poor's Manuel, 994, and in rejecting plaintiff's offer to prove the amount of said earnings, as shown on page 40 of the bill of ex.

m. The court erred in sustaining defendant's objection to Q. 76, as to whether they had before them the Investors' Guide, showing the value of the stocks of the C., C., C. & St. L. R'y Co. on the first day of April, 1891, as evidence, and in rejecting plaintiff's offer to prove that they had.

n. The court erred in refusing to allow said witness to answer Q. 77, as to whether said Investors' Guide was before said board and what it showed the value of the stocks to be on the first day of April, 1891, and in rejecting the offer of the plaintiff to prove said value to be 60 cents on the dollar.

o. The court erred in refusing to allow witness to answer Q. 80, as

to whether he made any deductions from the value of the F., F. & M. R. R.

p. The court erred in refusing to allow said witness to
620 answer Q. 82, as follows: "In the assessment of the C., L. & C. R'y, extending from Templeton, Indiana, to the Illinois State line, did you consider the market value of any stocks; and, if so, of what stocks did you consider the market value?" and in rejecting offer of plaintiff to prove by said witness that in assessing said line they considered the market value of stocks and bonds of the C., C., C. & St. L., a different corporation and representing to the extent of millions of dollars property wholly without the State of Indiana.

q. The court erred in refusing to allow witness Mathews to answer Q. 83, as to whether they considered the market value of stocks and bonds, and what stocks and bonds, in the assessment of the F., F. & M. R. R., and in rejecting offer of plaintiff to prove that they did.

r. The court erred in refusing to allow the same witness to answer Q. 84, making the same inquiry as to the V., G. & R. R. R.

s. Also as to the C., H. & G. R. R.

t. The court erred in refusing to allow witness Mathews to answer Q. 86, as follows: "In the assessment which you placed upon lines owning roads extending out of the State of Indiana into other States, did the board consider the value of the stocks and bonds and the gross and net earnings of such roads?" and in rejecting plaintiff's offer to prove the facts set forth above.

u. The court erred in refusing to allow witness Mathews to answer Q. 87, whether in making the assessment of the St. Louis division as compared with the T., H. & I. they considered the gross earnings of the C., C., C. & St. L. R'y Co., including earnings derived from carrying freight and passengers as a common carrier in inter-
621 state commerce, and in refusing to allow plaintiff to prove by said witness that they valued the St. Louis division of the C., C., C. & St. L., 72 miles, at $27,900 per mile upon the main track, $6,000 a mile higher than the T., H. & I. R'y, and that in making such valuation he considered and included and embraced values derived from gross earnings resulting from interstate commerce and earned in carrying on interstate commerce from and through the State of Indiana.

v. The court erred in refusing to allow said witness to testify in answer to Q. 88: "In making the assessment of railroads in the State of Indiana, in arriving at the basis for the estimate of values when said roads were operated by or leased to or parts of a consolidated road or system of roads extending into other States, existing partly in the State of Indiana and partly in other States, whether you considered the market value of stocks and bonds of the consolidated road or of the road resting upon the entire property of such roads in the different States, whereas in assessing roads wholly within the State of Indiana you considered stocks and bonds and earnings resting upon property and earned by property wholly within Indiana," and in rejecting the offer of plaintiff to prove that such was the case.

w. The court erred in refusing to allow said witness to answer Q. 89: "You say you made liberal allowances for all proper deductions. Did you make these allowances from a gross sum in the case of the C., C., C. & St. L. property and leased and operated lines operated by it, considering the market value of the stocks and bonds of the whole system and the gross and net earnings of the whole system, or did you make the deductions from the separate valuations of the separate lines?" and in rejecting the offer of plaintiff to prove the facts stated in the question.

622 *x.* The court erred in refusing to permit the witness to answer Q. 90: "Did you fix the value of the St. Louis division of the C., C., C. & St. L., as returned to the auditor of state, separately, or did you value the road as a part of the C., C., C. & St. L. system in Ohio and in Indiana, and did you, having reached a unit of value by considering the whole system, distribute that unit of value according to mileage over the operated and leased lines and parts of roads in Indiana of the plaintiff?" and in rejecting the offer of plaintiff to prove that the board did not fix the value separately, but that they fixed the value as a unit upon the entire property of the C., C., C. & St. L. and then arbitrarily distributed such value upon the St. Louis division and other divisions of the plaintiff's road in proportion to mileage.

y. The court erred in not allowing witness Mathews to answer Q. 97: "I will ask you if the board of equalization, in equalizing the value of real estate in Indiana, did not fix a value at which the real estate of the various counties was equalized not to exceed 70% on the dollar," and in rejecting the offer of plaintiff to prove such to be true.

z. The court erred in refusing to allow plaintiff to offer in evidence the statement of F. J. Van Vorhis made to the board on the evening of August 18, 1891.

a''. The court erred in sustaining the objection to the testimony of Colonel Walker, Q. 3, p. 89, as to what members of the board were present when Assessor Wolf stated that the assessment of real estate in Indianapolis was not more than 80% of its cash value, and when Commissioner Walker, after such statement, said that Indianapolis would pay 10% to 15% more taxes than any other city in the State.

623 *b''.* The court erred in refusing to allow Colonel Walker to answer Q. 4, as to whether any member of the board made any protest that the statement of Wolfe and Walker was not correct at the time or at any subsequent time before the adjournment of the board.

c''. The court erred in excluding the report of the Terre Haute & Indianapolis Railroad Company made by said company to the State board and sustaining the objection to such evidence. Pp. 168, 169.

d''. The court erred in refusing to allow plaintiff to offer in evidence the opinion of the attorney general of Indiana from the proceedings of the State board of tax commissioners on August 25,

1891, at 2.00 p. m., as shown on page 36 of said record of the proceedings. P. 236.

e''. The court erred in refusing to allow plaintiff to offer the proceedings of the board of Friday, the 28th of August, on pp. 55, 56, and 57, with reference to the equalization of real estate in the counties of the State.

f''. The court erred in refusing to allow plaintiff to show the assessment of the various roads wholly within the State of Indiana and not being partly within and partly without the State of Indiana. P. 244.

g''. The court erred in refusing to allow J. O. Henderson, one of the commissioners, to answer Q. 4, as to whether the board had before them when considering the assessment of the property of the plaintiff the record of the assessment of the same properties made by the State board of equalization for the year 1890. Pp. 297–321.

h''. The court erred in refusing to allow witness Henderson to answer as to whether any notice of any kind was given to the Big Four, the plaintiff, or any information of any kind after the
624 8th of September of the amount of the assessment before the adjournment of the board on the 11th day of September.

i''. The court erred in refusing to allow plaintiff to offer in evidence the opinion of the attorney general of Indiana July 13th, 1891. P. 324.

j''. The court erred in refusing to allow plaintiff to ask Commissioner Mathews what he meant by "franchise" in answer to Q. 97 when he said that the board did not add anything to the lines of road by reason of the fact that it had a franchise.

k''. The court erred in refusing to allow Mathews to answer the question of plaintiff, "What was the average value of farm lands in the State of Indiana with reference to the amount at which they were equalized by the board in the year 1891?"

II. The finding, decision, and judgment of the court is not supported by and is contrary to the evidence.

III. The finding, decision, and judgment of the court is contrary, in this, to wit:

1. The court decides that the act of March 6th, 1891, of the legislature of Indiana with reference to taxation, providing protection to all persons against mistakes and errors of law and fact and irregularities and inequalities in original assessments of the value of property for taxation by giving them the right to file complaints before proper tribunals and have a hearing after the assessment has been made to correct such errors, mistakes of law and fact, inequalities, and irregularities, except companies owning and operating railroads, does not deprive railroad companies of the protection against mistakes of law and fact and inequalities and irregularities in the making of original as-
625 sessments of their property denominated railroad track and rolling stock granted to all other persons.

2. The court holds that a general act providing for the assessment of all property for taxation according to value, which grants protection to all classes of persons and property, except one, against

mistakes, errors of law and fact, and inequalities in original assessments by giving them the right to have a hearing as to the correctness of such assessments after they are made before proper tribunals, and confers no protection whatever as to such excepted class for mistakes, errors, and inequalities in original assessments, grants the equal protection of the law to such excepted class against errors, mistakes, and inequalities in original assessments.

3. The court decides that a general act providing for the assessment of all property for purposes of taxation according to value, which grants to some citizens the right to correct errors and mistakes in the assessment of their property and denies this right to other citizens, does not grant privileges to some citizens which do not equally belong to all citizens, in contravention of the constitution of Indiana, art. 1, sec. 23.

4. The court decides that an act providing for the assessment of property for purposes of taxation, which confers upon the party making such assessment the right to obtain information whence and where it will, without notice to or knowledge of the parties interested and to be affected thereby, without the witnesses being sworn, and without the opportunity to cross-examine or to explain or refute or rebut their testimony, and without any right or opportunity in any proceeding or any tribunal to be heard concerning the correctness of the assessment or whether the amount charged against him or his property was ascertained and apportioned in good faith and in the manner provided by law, is not in contravention of the constitution and does not lack the essential elements of due process of law.

626

IV. The finding, decision, and judgment of the court is contrary to law.

Wherefore the plaintiff prays for a new trial of this case.

JOHN T. DYE,
BAKER & DANIELS,
For Defendant.

Which motion for a new trial was, on said 19th day of September, 1892, overruled by the court, and to the overruling of such motion for new trial the plaintiff at the time excepted.

And the plaintiff thereupon, on said 19th day of September, 1892, prayed an appeal to the supreme court of Indiana, which appeal was granted; and the court granted to plaintiff sixty days in which to prepare and file its bill of exceptions, and now, within the time so granted, to wit, the 18th day of October, 1892, plaintiff presents to the court this its bill of exceptions, and the same is signed and sealed by the court and made part of the record herein.

EDGAR O. BROWN, *Judge.*

STATE OF INDIANA, }
County of Marion, } *ss:*

627 I, John R. Wilson, clerk of the circuit court within and for the county aforesaid, do hereby certify that a long-hand manuscript of the evidence adduced, rulings made, exceptions noted, etc.,

on the trial of this cause, numbered 6133, was duly filed in my office on the — day of October, A. D. 1892, and that the same, embodied in plaintiff's bill of exceptions herein and now certified and transmitted herewith, is the identical one so filed as aforesaid.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 20th day of October, A. D. 1892.

[SEAL.] JOHN R. WILSON, *Clerk.*

STATE OF INDIANA, } ss:
County of Marion, }

I, John R. Wilson, clerk of the circuit court within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the entries of proceedings had and papers filed in said circuit court belonging on appeal to this cause, numbered 6133, as appear from the records and files of said court now in my custody and keeping.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 20th day of October, A. D. 1892.

[SEAL.] JOHN R. WILSON, *Clerk.*

628 In the Supreme Court of Indiana.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, Appellee.
} Appeal from Marion Circuit Court.

Assignment of Errors.

Comes now the appellant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and says there is manifest error in record in the above-entitled cause of C., C., C. & St. L. R'y Co. *vs.* Victor M. Backus, treasurer of Marion county, Ind., as follows, to wit:

1. The court below erred in rendering a judgment and decree against appellant, plaintiff below, and in favor of appellee, defendant below.

2. The court below erred in overruling appellant's motion for a new trial.

Wherefore appellant prays that said judgment be -versed.

C., C., C. & St. L. R'Y CO.,
By BAKER & DANIELS,
JOHN T. DYE,
Attorneys for Appellant.

Octo. 28th, 1892.

629 STATE OF INDIANA:

In the Supreme Court.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, Treasurer.

No. 16769. Appeal from the Marion Circuit Court.

And be it also remembered that on said 28th day of October, 1892, a notice to appellee of the pendency of this appeal issued; which notice, together with the sheriff's return endorsed thereon, is in the words and figures following, to wit:

630 The State of Indiana to the sheriff of the supreme court, Greeting:

You are hereby commanded to notify Victor M. Backus, treasurer of Marion Co., or his attorneys of record that on the 28th day of October, 1892, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company filed in the clerk's office of the supreme court of Indiana a transcript of the record and proceedings in a certain suit appealed from the Marion circuit court (No. 6133), in which said railway company was plaintiff, and said Victor M. Backus, treasurer, was defendant, and notify said appellee that at the expiration of thirty days from the date of service of this writ said appeal will be submitted to said supreme court, and unless he appear at the supreme court room, in Indianapolis, before said supreme court and defend said appeal the same will be proceeded upon in his absence; you are further commanded to make due return of this writ within ten days from date hereof.

Witness Andrew M. Sweeney, clerk of said supreme court, and the seal thereof, at Indianapolis, this 28th day of October, A. D. 1892.

[SEAL.] A. M. SWEENEY, *C. S. C.*

Come to hand Oct. 28th, 1892. Served on the within V. M. Backus by reading to and within his hearing *and* copy this 28th day of Oct., 1892.

Sheriff's fee, 75c.

H. W. LANGENBERG,
Sheriff Marion Co.

631 And afterwards, to wit, on said 28th day of October, 1892, the appellant, by its attorney, John T. Dye, Esq., filed a motion to advance this cause on the docket for an early hearing and decision; which motion is in the words and figures following, to wit:

Supreme Court of Indiana.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer, Appellee.

Petition to Advance.

Comes now the appellant in this case and shows to the court that this suit was brought by appellant against the treasurer of Marion county to enjoin collection of taxes extended upon duplicate in the hands of said treasurer against appellant under alleged assessment made by the State board of tax commissioners of Indiana for the year 1891.

It shows to the court that in the pleadings in said cause appellant claims that the act of March 6th, 1891, is in contravention to the 14th amendment of the Constitution of the United States in this:

1. That said act touching the assessment of property upon which taxes are to be levied provides that all persons except railroad companies shall have the right after an assessment has been made to file a complaint in the proper tribunal to correct any errors or mistakes of law or facts or erroneous judgment in such original assessment. Said right is granted as a protection against burdens and impositions resulting from mistakes, errors, or misjudg-
632 ments in making original assessments of property upon which taxes are to be laid, but this act wholly denies railroad companies that protection which is granted therein to all other persons, and withholds from them the right to file any complaint or make any application or take any steps whatever before the tribunal that makes the original assessment or in any other way to protect itself against burdens and impositions growing out of mistakes, errors, or misjudgments of the original assessment against which all other persons are protected, thus depriving railroad companies of the equal protection of the law.

It is also claimed that the said act is void because it denies to railroad companies due process of law.

It is also claimed that the board which made the assessment in the year 1891 was not constituted in accordance with law and was not a legal board.

It is also claimed that said board placed a value in the assessment made by it upon appellant's property far in excess of the value returned by appellant and far in excess of the actual value of the appellant's railroad track and rolling stock, and that return was made without inspection or examination of the property assessed and against the only evidence before the board, arbitrarily, with the intention and for the purpose of discriminating against plaintiff's property and subjecting it to a greater burden of taxation than that imposed upon other persons owning property of equal value.

It is further alleged in said complaint that in making assessment of appellant's property said board assessed the value and returned

to the auditor of the State the value of property wholly without jurisdiction of the State taxing board, and that it discriminated against appellant's property, as is more fully set forth in the complaint contained in the transcript.

Appellant shows that it has fully paid all taxes that are due to the treasurer of Marion county for the year 1891, upon a just and fair value of its railroad track and rolling stock, at its true
633 cash value, but that there is a large amount still claimed to be due by said treasurer, for which he is threatening to levy upon the property of appellant.

The appellee resisted the right of appellant to such injunction. The court decided in favor of appellee.

Appellant shows that if this case is not advanced the appellee will proceed to levy upon its property and sell same, unless it should be enjoined by this court.

Your petitioner further shows that the case is one of public interest and that many cases depend upon the disposition that shall herein be given, involving large sums of money claimed by the State of Indiana as taxes under said assessment.

Wherefore the appellant prays that the cause may be advanced and set down for oral argument at an early date.

JOHN T. DYE.

STATE OF INDIANA, }
Marion County. }

Personally appeared before me, the undersigned notary public in and for said county, —, and, being duly sworn, stated on oath that the allegations of the foregoing petition are true.

M. H. PEACOCK,
[SEAL.] *Notary Public in and for said County.*

And thereupon notice to appellee of the pendency of said petition to advance was issued; which notice, together with the sheriff's return endorsed thereon, is in the words and figures following, to wit:

634 THE STATE OF INDIANA:

In the Supreme Court.

C., C., C. & St. L. R'y Co. *vs.* VICTOR M. BACKUS, Treas. of Marion County. } No. 16769. Appeal from Marion Circuit Court.

To the sheriff of the supreme court, Greeting:

You are hereby commanded to notify Victor M. Backus, treasurer of Marion county, or his attorneys of record, that on the 28th day of October, 1892, the C., C., C. & St. L. R'y Co. filed in the clerk's office of said court a motion to advance in the above-entitled cause, and notify said Victor M. Backus, treas., &c., to appear at the state-house, in Indianapolis, Indiana, before said court and defend said

motion on the 15th day of November, 1892, else the same will be proceeded upon in his absence, and have you then and there this writ.

Witness Andrew M. Sweeney, clerk of said supreme court, and the seal thereof, at Indianapolis, this 28th day of October, A. D. 1892.

[SEAL.] A. M. SWEENEY, *C. S. C.*

Come to hand Oct. 28th, 1892.

Served on the within-named V. M. Backus by reading to and within his hearing *and* copy this 28th day of Oct., 1892.

Sheriff's fee, 75c.

H. W. LANGENBERG,
Sheriff Marion Co.

And afterwards, to wit, on said 28th day of October, 1892, the appellant, by its counsel aforesaid, filed its brief and argument in said cause.

635 And be it also remembered that afterwards, to wit, on the 29th day of October, 1892, the appellee, by A. G. Smith, attorney general, and by Solomon Claypool, J. W. Kern, A. C. Ayres, A. J. Beveridge, and W. A. Ketcham, his attorneys, filed his agreement to advance this cause on the docket for an early hearing and decision; which agreement is in the words and figures following, to wit:

The appellee, without scrutinizing the details of the within statement, does concur in the statement that the matters involved in and presented by the record are matters of great public interest and public importance, and that it is of great importance to the people of the entire State of Indiana as well as to the appellant and the appellee that the legal questions presented by the record should be decided finally as speedily as is consistent with the proper administration of justice, and the appellee therefore unites in the prayer for an advancement and for an oral argument.

A. G. SMITH, *Att'y Gen'l.*
S. CLAYPOOL,
J. W. KERN,
A. C. AYRES,
A. J. BEVERIDGE,
W. A. KETCHAM,
Of Counsel for Appellee.

And afterwards, to wit, on said 29th day of October, 1892, the appellee, by his counsel aforesaid, filed his joinder in error and agreement to submit in the words and figures following, to wit:

636 THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS R'Y COMPANY, Appellant, *vs.* VICTOR M. BACKUS, Treasurer, Appellee. } No. 16769. Joinder in Error.

The said appellee, Victor M. Backus, treasurer, now appears to the appeal in the above-entitled cause and says that there is no error in the record and prays that the judgment be affirmed.

A. G. SMITH, *Att'y Gen'l.*
S. CLAYPOOL,
J. W. KERN,
A. C. AYRES,
Of Counsel for Def't.
A. J. BEVERIDGE.
W. A. KETCHAM.

Oct. 29, '92.

This cause may be submitted by agreement.

JOHN T. DYE,
For Appellant.
A. G. SMITH,
Att'y Gen'l, &
OTHERS,
By KETCHAM,
For Appellee.

And thereupon an entry was made submitting this cause to the court for decision in pursuance to said agreement.

637 And be it also remembered that on the 2nd day of November, 1892, the court, having examined the petition to advance heretofore filed herein and being fully advised in relation thereto, grants the same and orders that this cause be advanced on the docket for an early hearing and decision.

And be it also remembered that on the 17th day of November, 1892, the court, having examined the petition for oral argument heretofore filed herein and being fully advised in relation thereto, grants the same and sets the 14th day of December, 1892, at 9.30 o'clock a. m., as the time for hearing the argument and notices thereof to the attorneys for the appellant and appellee issued.

And be it also remembered that on the 22nd day of November, 1892, the P., C., C. & St. L. R'y Co., by its attorneys, Butler, Snow and Butler, filed a supplemental brief on behalf of appellant.

And be it also remembered that on the 23rd day of November, 1892, the appellant, by A. C. Harris, filed a brief in said cause.

And be it also remembered that on the 2nd day of December, 1892, the appellant, by its counsel aforesaid, filed its points for oral argument in the words and figures following, to wit:

638 Supreme Court of Indiana.

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Appellee.

Points of Argument on Behalf of Appellant.

[In pencil:] Dec. 2, '92.

639 I.

The act of March 6, 1891, is a violation of the fourteenth amendment of the Constitution of the United States, because it denies to one class the equal protection of the laws granted to all other persons against erroneous, unjust and illegal assessments of the value of property upon which taxes are to be laid, in that it grants to all persons the right or privilege to be heard before some tribunal authorized to correct errors or give appropriate relief concerning the correctness or legality of assessments or inequalities in the same, or mistakes of fact or law, or illegal conduct of those charged with the duty of making the same, after the original assessments have been made, and before they become final and conclusive, as a protection against burdens imposed by such mistakes and errors; but as to railway companies the act utterly denies all protection whatever against the same burdens against which others are protected.

1. Railroad corporations are persons within the intent of the clause in section 1 of the fourteenth amendment of the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

Santa Clara case, 118 U. S., 396.
Minn. & S. L. R'y Co. *vs.* Beckwith, 9 Sup. C't Rep., 207.
Mining Co. *vs.* Penn., 125 U. S., 181.

2. "The fourteenth amendment of the Constitution in de-
640 claring that no State shall deny to any person within its jurisdiction the 'equal protection of the laws,' imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation."

San Mateo case, 8 A. & E. R. R. C., 1.
Santa Clara case, 13 *id.*, 182.

3. The constitutional guaranty of equal protection under the laws not only extends to taxation, but embraces the entire process, and includes the assessment of the valuation of property, as well as the rate of percentage charged thereon.

San Mateo case, 8 A. & E. R. R. C., 1.
Santa Clara case, 13 *id.*, 205.
Scott *v.* City of Toledo, 36 Fed. Rep., 397.

"That clause does undoubtedly prohibit discriminating and partial legislation by any State in favor of particular persons, or against others in like condition. Equality of protection implies not merely equal accessibility to the courts, * * * but equal exemption with others in like condition from charges and liabilities of every kind." M. & S. L. R'y Co. *vs.* Beckwith, 9 Sup. C't Rep., 208.

4. "The fourteenth amendment means that no person, or class of persons, shall be denied the same protection of the laws that is enjoyed by other persons or classes in the same place under like circumstances."

Missouri *v.* Lewis, 101 U. S., 31.
Barbier *v.* Connelly, 113 U. S., 27.
Henderson *v.* Mayor of New York, 92 U. S., 259.
Chy Lung *v.* Freeman, 92 U. S., 275.
Ex parte Virginia, 100 U. S., 339.
Neal *v.* Delaware, 103 U. S., 370.
Soon Hing *v.* Crowley, 113 U. S., 703.
Yick Wo *v.* Hopkins, 118 U. S., 367.

641 5. The denial to one class of the right to resort to any tribunal to correct mistakes of law or fact, or of judgment in the assessment of values for taxation, after the original assessment has been made, when such right is by law granted to all other classes, is a denial of the equal protection of the law.

San Mateo case, 8 A. & E. R'y C., 1.
Santa Clara case, 13 A. & E. R'y C., 205.
Lent *vs.* Tillson, 11 Sup. C't Rep., 825.
M. & S. L. R'y *vs.* Beckwith, 9 Sup. C't Rep., 207.
Scott *v.* City of Toledo, 36 Fed. Rep., 397.

6. Citizens cannot be classified so as to be denied equal protection of the law.

Walley's heirs *vs.* Kennedy, 2 Yerger, 554; 24 Am. Dec., 511.

7. Neither can you classify property so that the owners of one class shall be deprived of remedial rights granted to all other citizens.

8. In Indiana, under a law providing for the levy of taxes upon property according to its assessed value, there can be no classification subjecting certain classes of property directly or indirectly to a higher rate of assessment than other property.

Const. of Ind., art. X, sec. 1.

9. The question as to unequal protection in denying to a class an opportunity to question the correctness of an assessment after it is made, and before it becomes final and conclusive, cannot arise in States where a mode is secured of confirming or contesting the charge imposed in ordinary courts of justice, before it becomes final.

Davidson *v.* New Orleans, 96 U. S., 97–104.
Hagar *vs.* Reclamation District, 111 U. S., 701.

642 Kentucky State tax cases, 115 U. S., 321.
Scott *v.* City of Toledo, 36 Fed. Rep., 385–397.
Garvin *v.* Dausmann, 114 Ind., 429.
Lent *vs.* Tillson, 11 Sup. C't Rep., 828.

10. A State cannot grant statutory relief or protection against one kind of burdens and impositions, although such protection and relief may not be required by "due process of law," and at the same time deny equal protection to other persons against the same kind of burdens and impositions.

11. In Indiana "it is without doubt essential to the validity of every law under which proceedings may be had for the taking of property, or to impose burdens upon it which may result in taking it, that the law make provision for giving some kind of notice at some stage in the proceeding, and that it offer an opportunity to be heard concerning the legality of the assessment before some tribunal or body authorized to correct errors, or give proper relief before the property is taken, or the charge is made absolute." * * * "Any proceeding, therefore, the result of which is to deprive the owner of his property, or to impose upon or create a charge against it, and which is carried on under a law which makes no provision for notice, and offers the owner no opportunity to be heard concerning the correctness of the assessment, whether the amount charged against him or his property was ascertained and apportioned in good faith, and in the manner provided by law, is a contravention of the Constitution, and lacks the essential elements of due process of law."

Garvin *vs.* Daussman, 114 Ind., p. 422.
Lent *v.* Tillson, *supra.*

643 12. That protection which is important in the assessment of property small in value and simple in form vastly increases in importance, as the property increases in value and becomes more complicated in form, and especially when it embraces many elements, only a part of which are subject to assessment, and the liability to err, and the amount of such errors, is thereby vastly increased. San Mateo case, *supra.*

II.

The board considered and estimated, and included and blended, in the valuation of appellant's property returned by it, values not within its jurisdiction.

Santa Clara case, 118 U. S., 394.
State of Cal. *vs.* C. P. R. R. Co., 8 Sup. C't Rep., 1075; 127 U. S., 1.

1. Only four categories of railroad property are subject to taxation in Indiana, to wit:

a. Railroad track,—being the strip of land to be described by metes and bounds, with all improvements thereon—except machin-

ery, stationary engines and fixtures, which is to be assessed as real estate by the State board;

b. Rolling stock, which is to be assessed by the State board;

c. All real estate not included in the term "railroad track," which is to be assessed by the local assessors;

d. Improvements on right of way not embraced in "railroad track," viz: machinery, stationery engines and fixtures which shall be considered personal property and assessed by the local assessor, and all other personal property.

Act of March 6, 1891.

644 2. No other kinds of railroad property are subject to taxation in Indiana.

a. The franchise, or privilege of operating the railroad;

b. The good will, or business of the railroad company;

c. The value of leases, contracts, traffic agreements with other corporations;

d. The capital stock, which embraces all its assets;

e. In the case of a consolidated company, the value of franchise in another State, leases and operating contracts with lines in other States, bonds and stocks which the consolidated company holds resting upon lines in other States, terminal properties and contracts with reference thereto in other States, all go to make up the value of the "road." The kinds of property named under this head are not assessable in the State of Indiana, but they are all included under the term "railroad."

3. This board "fixed the values of the respective railroads and parts of roads" within the State of Indiana for taxation.

a. The board certifies: "Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth. In arriving at the basis for the estimate of said values, the board has considered the cost of the construction and equipment of said
645 roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same,"—that is, "railroads and parts of roads."

b. This certificate is conclusive that the value which the board agreed upon and returned was the value of the respective "railroads and parts of roads," and includes other property besides "railroad track" and "rolling stock."

Cooley on Taxation, 413.
Van Rensselaer *vs.* Witbeck, 7 N. Y., 517.
Hogelskamp *vs.* Weeks, 36 Mich., 422.
Clark *vs.* Crane, 5 Mich., 151.
Colby *vs.* Russell, 3 Me., 227.
Foxcroft *vs.* Nevins, 4 Me., 72.
Johnson *vs.* Goodridge, 15 Me., 29.
Keelar *vs.* Savage, 20 Me., 199.

Hinckley *vs.* Cooper, 22 Hun., 253.
Westfall *vs.* Preston, 49 N. Y., 349.
State Auditor *v.* Jackson County, 65 Ala., 142.
Dickson *vs.* Reynolds, 48 Mich., 158.

"Words are to be taken according to their customary, not their original or classical signification."
Lieber's Hermeneutics, p. 144.
Sedgwick on Construction of Statutory and Constitutional Law, pp. 247, 198, 220, 224.
E. & C. R. R. Co. *v.* Meeds, 11 Ind., 274.
Plumer *vs.* Supervisors, 46 Wis., 163.
Scheiber *vs.* Kaehler, 49 Wis., 291.

c. It is also conclusive that they did not assess "railroad track" and "rolling stock" at its true cash value, but assessed railroads and parts of roads for purposes of taxation.

646 In the Century dictionary, under the title "railway," to which the title "railroad" refers, is this statement: "But in common and accepted usage the meaning of the terms railroad and railway has been extended to include not only the permanent way, but everything necessary to its operation, as the rolling stock and buildings, including stations, warehouses, round-houses, locomotive shops, car shops and repair shops, and also all other property of the operating company, as stocks, bonds and other securities."

As to the meaning of the word "railroad" see also:
Argument of Van Vorhis, pp. 9, 11, 12, 13, 14.
Dunn's Science of Taxation, 19.
Wood's Railway Law, pp. 315, 770, 955, 1618, 1640, 1641, 1684.
Jones on Railroad Securities, sec. 124, 125, 131.
Illinois Midland R. R. Co. *vs.* Barnett, 35 Ill., 318.
Coe *vs.* McBroom, 22 Ind., 255.
A. & P. R. R. Co. *vs.* Lesueur, 37 A. & E. R. R., 370.
Commonwealth *vs.* L. & N. R. R. Co., 37 A. E. R. R., 419.
Nashville Street R. R. *vs.* Morrow, 39 A. E. R. R., 521.
State Railroad tax case, 92 U. S., 586, 605.
Revised Statutes Ind., 1881, sec. 3937, 3938, 3941, 3953.
Act of March 6, 1891, sec. 81.
Blank form of schedule No. 4, prepared by board.

"The act of Dec. 21st, 1858, (1 G. & H., 85,) contemplated taxing railroads, including all property included, used in running and operating the same as in entirety or unit."

647 I. C. & L. R. R. Co. *vs.* Kilner, 69 Ind., 81.

"A railroad company should be taxed, under the law as it now stands, for its "road" as an entirety, including all property in any way used by it in running or operating the road."
Toledo & Wabash R. R. Co. *vs.* Lafayette, 22 Ind., 269, 269 (1864).

III.

The State board of tax commissioners—acting by and in virtue of their public position under the State government, in the name of and for the State, and clothed with the State's power, in making the valuation of appellant's property upon which taxes were to be laid—denied to appellant due process of law.

Ex parte Virginia, 100 U. S., 347.
Yick Wo *v.* Hopkins, 118 U. S., 373, and cases cited.

1. By fixing a day and hearing an adverse party as to the assessment that should be placed upon appellant's property, without notice to appellant, after having given appellant notice that the hearing would take place at a different and later time, thus depriving it of the opportunity to protect and defend its rights.

a. Such action by a master in chancery, exercising the same judicial function of valuing railroad property for the purpose of marshalling securities, or by commissioners in condemnation proceedings exercising the same judicial function of valuing property when taken by the State under the power of eminent domain, or such action by a board of arbitrators charged with the duty of valuing the same property, would be so odious that it would not stand for an instant.

648 *b.* What the law denounces when done by a body whose errors and mistakes can be corrected becomes more odious, as it is more dangerous, when done by a tribunal whose errors cannot be questioned except for fraud or want of jurisdiction. See:

Lewis on Eminent Domain, 420.
Peavy *vs.* Wolfborough, 37 N. H., 286.
Patten's petition, 16 N. H., 277.
Harris *vs.* Woodstock, 27 Conn., 567.
Lenox *vs.* R. R. Co., 62 Me., 322.
Moshier *vs.* Shear, 102 Ill., 169.
Johnson *vs.* Holyoke Water Power Co., 107 Mass., 473.

c. To sustain such action would be to sanction and justify the means by which the whole system of making final and conclusive assessments of railroad property would be perverted and corrupted.

Moshier *vs.* Shear, 102 Ill., 169.

2. After hearing Van Vorhis and no other witness they withheld their decision and action until three days before the close of their session, and gave appellant no notice of such action, and it was not spread on record until the board adjourned, thus depriving appellant of all opportunity to be heard concerning the correctness of the assessment and whether the amount charged against it and its property was ascertained and apportioned in good faith and in the manner provided by law.

IV.

The act of March 6, 1891, denies due process of law to railroad companies in the assessment of railroad property in this, that it denies them:

649 1. An opportunity to be heard,

2. In an orderly proceeding adapted to the nature of the the case,

3. In which they can defend, enforce and protect their rights,

4. And in which they can prove any fact according to the usages of the common law which would be a protection to their property, before the change is made final and conclusive.

Hagar *vs.* Reclamation District, 111 U. S., 709.
Stuart *vs.* Palmer, 74 N. Y., 188.
Campbell *vs.* Dwiggins, 83 Ind., 481.
Garvin *vs.* Daussman, 114 Ind., 422.
State *vs.* County of Dodge, 31 N. W., 121.
People *vs.* Reynolds, 28 Cal., 111.
Patten *vs.* Green, 13 Cal., 329.
Darling *vs.* Gunn, 50 Ill., 424.
Cleghorn *vs.* Postlewaite, 43 Ill., 428.
Griffin *vs.* Mixon, 38 Miss., 424.
Dent *vs.* W. Va., 129 U. S., 114.
Yick Wo *vs.* Hopkins, 118 U. S., 356.
Hurtado *vs.* California, 110 U. S., 516.
Railway Company *vs.* Minnesota, 134 U. S., 418.
San Mateo case, 8 A. & E. R. R. Cases, 37.
Santa Clara case, 13 A. & E. R. R. C., 1.
Palmer *vs.* McMahan, 10 S. C. Rep., 327; 133 U. S., 660.
Lent *vs.* Tillson, 11 S. C. Rep., 825; 140 U. S., 316 (1891).

Notice of the time when the board sits avails nothing unless there is a legal right to be present at the hearing of the evidence, and to be heard in an orderly proceeding adapted to the nature of
650 the case, in which a party can confront witnesses, cross-examine them under oath, and have an opportunity to explain or disprove their statements.

A party cannot defend and protect his rights in a proceeding where he cannot be advised of the evidence or the arguments or the appeals that have been made in his absence against him, without notice to him.

V.

The act of March 6, 1891, contravenes art. IV, sec. 22, of the constitution of Indiana, that the legislature shall pass no special laws for the assessment of taxes.

VI.

The act contravenes art. 1, sec. 23, of the constitution of Indiana, providing that privileges or immunities shall not be granted to one class which shall not equally belong to all.

VII.

The act contravenes art. X, sec. 1, of the constitution of Indiana, requiring a uniform and equal rate of assessment and taxation.

VIII.

The act contravenes the same section because it prescribes regulations by which railroad companies cannot "secure a just valuation for taxation" of their property.

1. This board may construe the law and act upon secret information without revision or control. Railroads cannot in any tribunal question the correctness of the board's action, nor can they even ascertain the construction of the law, or the assumed facts upon which the board acts. The act clothes the board with arbitrary, uncontrolled power.

651 2. Under this act as construed by the court below, in assessing railroad track the board may take into account and blend with their valuation values which they have no right to consider, and their action cannot be questioned.

3. Under this act, as construed by the court below, the board may lay burdens on interstate commerce according to the amount of receipts derived from interstate commerce in the use of such means.

4. The board may discriminate between different classes of property by considering in assessing one class, elements omitted in assessing other classes, and by assessing one class at a higher rate in proportion to actual value than other classes.

IX.

The court erred in excluding evidence of statements of Van Vorhis, made on the 18th of August, as to the elements they should consider in arriving at the value of a "railroad."

X.

The court erred in excluding evidence as to value of appellant's "railroad track."

Cummings *v.* National Bank, 101 U. S., 155–156.
C., B. & Q. R. R. Co. *v.* Cole *et al.*, 75 Ill., 594.

XI.

This law has "been administered with an evil eye and an unequal hand, so as to practically make an unjust and illegal discrimination between persons in similar circumstances material to their rights," and to work "a denial of equal justice within the prohibition of the Constitution of the United States."

Yick Wo *vs.* Hopkins, *supra*.

JOHN T. DYE,
BAKER & DANIELS,
For Appellant.

November 30, 1892.

652 And be it also remembered that on the 19th day of December, 1892, the Indianapolis Union Railway Company, by A. C. Harris, its attorney, filed a brief in said cause.

And be it also remembered that on the 13th day of January, 1893, the appellant, by A. C. Harris, filed a statement in relation to said cause in the words and figures following: (Here insert.)

And be it also remembered that on said 13th day of January, 1893, the appellee, by his attorneys aforesaid, filed his brief and points for oral argument in said cause; which points are in the words and figures following, to wit:

653 In the Supreme Court of Indiana.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, Appellee,
No. 16769.

and

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, *et al.*, Appellees,
No. 16799.

and

THE INDIANAPOLIS & VINCENNES RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, *et al.*, Appellees.
No. 16800.

Points and Authorities for Oral Argument.

Presumed constitutional.

The provisions of the tax law of 1891, now questioned for the first time, have been in force from thirty-four to forty years.

654 This ought to be conclusive as to their constitutionality, certainly so far as alleged to be against our State constitution.

State Board of Assessors *v.* Central R. R. Co., 48 N. J. Law, 276.
Moers, etc., *v.* City of Reading, 21 Pa. St., 188.
Norris *v.* Clymer, 2d Barr, 277.
Briscoe *v.* Bank, etc., 11 Pet., 257.
People *v.* Marshall, 1st Gilm., 672.

Boards of Equalization.

County, district and State boards of equalization have in this State always been created by acts making certain officers *ex officio* members of such board—the boards at different times being created by

making different officers members of the board. These boards have often been vested with original and final jurisdiction.

Tax law of June 21, 1852, 1 G. & H., 83, sec. 58.
Act of May 28, 1852, 1 G. & H., 320, secs. 2, 5, 7.
Tax law of December 21, 1872, Acts, p. 57, secs. 150, 284.
Tax law of March 29, 1881, R. S., sec. 6402.

Mode of Assessment.

The present mode of assessing and apportioning "railroad track" and "rolling stock" among counties, and the same difference in the mode of assessing such property and other property, had its inception, in this State, under act of December 21, 1858, and has continued ever since under the provision of every tax law.

Act 1858, sec. 6, part 2d, 1 G. & H., 85.
Act 1872, p. 57, Returns, secs. 71 to 77, 79 and 81.
Act 1872, Assessment, secs. 284, 291.
Act 1881, R. S. 1881, Returns, secs. 6360 to 6369 and 6371.
Act 1881, R. S. 1881, Assessments, secs. 6402, 6410.
Act 1891, p. 199, Returns, secs. 76 to 85 and 87.
Acts 1891, Assessment, secs. 129, 137.

655 Our tax law of 1891 and the Illinois tax law of March 30, 1872, are mostly in precisely the same language and are in substance and legal effect the same. Whatever discrimination is made in one act between the assessment of railroad property and other property is made in the other, so that if either is void, both are, and the reverse. And the law of Illinois has been decided constitutional.

State Railroad tax cases, 92 U. S., 575.

For convenience of comparison we give reference to some corresponding sections of the two laws, the figures preceding the dash being the Indiana law and those following, the Illinois law: Sections 76—40, 77—41, 78—42, 79—43, 80—first part of 44 and 45, 81, 82—46; 83—44, 84—47, 85—48, 86—49, 87—50, 88—151, 137—109.

Notice.

The Indiana and Illinois statutes each name the time and place of the meeting of the State boards, and no provision is made for the giving of other notice. This is all the notice "that due process of law" requires.

Cooley on Taxation, pp. 365, 361.
Tax cases, 92 U. S., 575, *supra.*
Hager *v.* Reclamation, etc., 111 U. S., 701.
Kentucky Railway Tax Cases, 115 U. S., 321.
Treasurer *v.* Rude Bros.' Mnfg. Co., 30 N. E., 947.
L. & N. A. R. R. Co. *v.* State *ex rel.*, 25 Ind., 177.

Respecting Importation of Values.

I.

The act of March 6, 1891, respecting taxation, does not, as a matter of law, require any interstate railway corporation to be charged with and pay taxes in Indiana upon the entire "rolling stock" and equipment of their entire interstate lines of railway upon the mileage basis. Even if it did, this would not be taxation of property out of the State. A correct construction of sections 80, 83 and 85
656 of the act, by themselves, demonstrates this, and when construed with the remainder of the law, as they must be, leaves no room for controversy.

Act March 6, 1891, sections 78, 79, 80, 83, 85 and 120.
Porter *v.* R. R. Co., 76 Ill., 561.
State Railroad tax cases, 92 U. S., 575.
R. R. Co. *v.* Surrel, 88 Ill., 535.
Potter's Dwarris on Statutes and Constitutions, pp. 128 and 678.
Stout *v.* Board, 107 Ind., 343.

II.

Said act does not, as a matter of law, require or permit the importation of any value situated in other States for taxation here; its purpose is merely to provide for taxation of certain railroad property within the State, and, to that end, provide means for ascertaining "the true cash value" thereof.

Act March 6, 1891, sections 78, 79, 80, 83, 85, and 120; and schedules and certificate cited by Mr. Butler's notes for oral argument, pp. 21, 22.
Porter *v.* R. R. Co., 76 Ill., 561.
Kansas Pacific R'y Co. *v.* Commissioners, 20 Kan., 141.
State Railroad tax cases, 92 U. S., 575.
Railroad Co. *v.* Surrel, 88 Ill., 535.

III.

Nor, as a matter of fact, did the State board of tax commissioners value and assess any property whatever beyond its jurisdiction. It assessed "railroad track" and "rolling stock" of appellant within the State of Indiana only.

Record of State board of tax commissioners in fixing valuation and assessment of P., C., C. & St. L. R'y Co.
Transcript P., C., C. & St. L. R'y. Co. *v.* Backus, pp. 232 to 235, inclusive.
Similar record for C., C., C. & St. L. R'y Co. *v.* Backus.
Testimony of Claude Matthews, Record P., C., C. & St. L. R'y Co. *v.* Backus, pp. 329, 330.
Testimony Claude Matthews, Record I. & V. R'y Co. *v.* Backus, pp. 240, 241.

657 Testimony Claude Matthews, Record C., C., C. & St. L. R'y Co. *v.* Backus, pp. —.
Rapalje & Lawrence's Law Dictionary.
Anderson's Law Dictionary.
Black's Law Dictionary.
Bouvier's Law Dictionary.
Abbot's Law Dictionary.
Winfield's Adjudged Words and Phrases.

Respecting the Alleged Assessment and Valuation of Interstate Commerce and the Instruments Thereof.

I.

The act of March 6, 1891, respecting taxation, as a matter of law does not require or permit the taxation of the proceeds or instruments of interstate commerce, nor of the privilege of carrying on interstate commerce; because the schedules which the law requires railroad companies to return must set out its "rolling stock," length of lines, capital stock, etc., it does not follow that all of these items are to be taxed, nor is that the purpose of said schedules.

Act March 6, 1891, sections 78, 79, 80, 83, 85 and 120, and various schedules of appellants required by the State board of tax commissioners.

II.

Nor, as a matter of fact, did the State board of tax commissioners assess and value the proceeds or instruments of interstate commerce as such, nor the privilege of carrying on interstate commerce.

Testimony Claude Matthews, Record I. & V. R'y Co. *v.* Backus, pp. 227–228, 329–330, P., C., C. & St. L. R'y Co. *v.* Backus.

III.

1. It is an elementary rule of statutory construction that an evil to be removed and the remedy provided shall be considered.

Miller on the Constitution, p. 82.

658 2. The interstate commerce clause of the Federal Constitution was not intended to prevent the taxation by a State of property within its borders merely because such property was used in interstate commerce.

3. So that even if it were true that the "railroad track" and "rolling stock" of appellants within the State were used by interstate commerce, they would still be liable to taxation by the State.

Sherlock *et al. v.* Alling, 93 U. S., 99.
Pullman Car Co. *v.* Pennsylvania, 141 U. S., 18.
Pullman Car Co. *v.* Heyward, 141 U. S., 36.
The tax law of the State of Kansas, upheld by above decision.
Wiggins Ferry Co. *v.* East St. Louis, 107 U. S., 365.

Marye *v.* Railroad Company, 127 U. S., 117.
State tax on railway gross receipts, 15 Wall., 284.
Western Union Telegraph Co. *v.* Attorney General, 125 U. S., 530.
Massachusetts *v.* Telegraph Co., 141 U. S., 40.
Maine *v.* Grand Trunk Railway Co., 142 U. S., 217.
Railroad Company *v.* Gibbes, 142 U. S., 386.
Leloup *v.* Port of Mobile, 127 U. S., 640.

4. As above shown, no property whose situs was without the State of Indiana was valued or assessed by the State board of tax commissioners.

IV.

A consolidated railway company consisting of various lines originally chartered by several States, but consolidated into one system under the laws of each of these States becomes, in law, the corporation of each of said States.

Respecting the Constitution of the Board.

I.

1. The duties required of and powers conferred upon the board by the act are not judicial. The board is not a court.
State Tax Law cases, 54 Mich., 393.
Board of Commissioners *v.* Sergeant, 24 Kan., 572.
659 Wilson *v.* Commission, 31 Kan., 257.
Auditor *v.* Railroad Company, 6 Kan., 500.
Railway Company *v.* State Board, 64 Mo., 294.
Hardenburgh *v.* Kidd, 10 Cal., 402.
State *v.* Wood, 110 Ind., 82.
Langenberg *v.* Decker, 31 N. E. Rep., 190.

2. Particularly is the above proposition true with reference to the powers and duties of the board with respect to the assessment and valuation of the property of railways. As to its powers and duties in hearing appeals from county boards of review, appellant could not be heard to object even if such powers and duties are judicial, because appellant is in no sense affected thereby. However, even those powers are held not to be judicial nor the board with reference thereto a court. (Above authorities.)

3. The tax commissioners whom the law provides shall be appointed by the governor are properly so appointed.
Constitution of State of Indiana, sec. 16 and 18, art. 5.
Constitution of State of Indiana, sec. 1, art. 15.
State *ex rel.* Yancy *v.* Hyde, 28 N. E. Rep., 186.

4. If, however, the constitution requires said tax commissioners to be elected by the people, as appellant contends, still they would

hold their office legally by appointment from the governor until the people elect them.

Constitution State of Indiana, sec. 18, art. 5.
R. S. Indiana, sec. 4648.
State *ex rel.* Worrell *v.* Peelle, 121 Ind., 495.
State *ex rel.* Yancey *v.* Hyde, 121 Ind., 20.
State *v.* Gorby, 122 Ind., 17.

5. Even if all this were not true, and they were *de facto* officers and not officers *de jure*, still, as to third parties and the public, their acts as such officers *de facto* are valid and binding.

Mechem's Public Offices and Officers, sec. 328 *et seq.*
Blackman *v.* State, 12 Ind., 556.
Bansemer *v.* Mace, 18 Ind., 27.
Gumberts *v.* Adams Co., 28 Ind., 181.

6. The duties and powers conferred upon the governor, auditor, and secretary of state, by said law, are properly so conferred.

State Tax Law cases, 54 Mich., 393.
Board of Commissioners *v.* Sergeant, 24 Kan., 572.
660 Wilson *v.* Commission, 31 Kan., 257.
Auditor *v.* Railroad Company, 6 Kan., 500.
Railway Company *v.* State Board, 64 Mo., 294.
Hardenburgh *v.* Kidd, 10 Cal., 402.
State *v.* Wood, 110 Ind., 82.
Langenberg *v.* Decker, 31 N. E. Rep., 190.

7. Practical construction of similar statutes under our Constitution prove that such powers as are conferred by the tax laws upon the governor, auditor, and secretary of state are properly so conferred.

Hovey *v.* State, 119 Ind., 386.
Bruce *v.* Schuyler, 4 Gilm., 221.
Rogers *v.* Goodwin, 2 Mass., 475.
Board *v.* Bunting, 111 Ind., 143.
Weaver *v.* Templin, 113 Ind., 298, 301.
Stuart *v.* Laird, 1 Cranch, 299.
Martin *v.* Hunter, 1 Wheat., 304.
Cohens *v.* Virginia, 6 Wheat., 264.
Ogden *v.* Saunders, 12 Wheat., 213, 290.
Minor *v.* Happersett, 21 Wall., 162.
State *v.* Parkinson, 5 Nev., 15.
Pike *v.* Megoun, 44 Mo., 491.
People *v.* Board, 110 Ill., 495.
State *v.* French, 2 Pinney, Wis., 181.

The act of March 6, 1891, is in accord with the fourteenth amendment to the Constitution of the United States in that:

(*a.*) It does not deprive or permit the deprivation from the owners of railroad property:

1. Without notice, but to the contrary, prescribes and provides for a good and sufficient notice.

2. Without a hearing, but on the contrary, provides a proper and sufficient opportunity to be heard.

Citations.

Sections 48, 56, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 85, 87, 104, 105, 106, 108, 113, 114, 115, 120, 125, 129, 132, 134, 135 and 137 of the act of March 6, 1891.
Sections 6357, 6358, 6397, 6399, the Revised Statutes of 1881.
661 Sections 2127, 2129, Elliott's Supplement.
Cooley's Constitutional Limitations, chapter XI, page 430.
Hare's American Constitutional Law, vol. 2, page 836.
Dent *v.* West Virginia, 129 U. S., 114.
Martin *v.* Mott, 12 Wheaton, 19.
Ex parte Milligan, 4 Wallace, 2.
In re Neagle, 135 U. S., 1.
Chicago, etc., R'y Co. *v.* Minnesota, 134 U. S., 457.
Pennoyer *v.* Neff, 95 U. S., 733.
Hyland *v.* Brazil, etc., Co., 128 Ind., 335.
Hyland *v.* The Central, etc., Co., 129 Ind., 68.
Smith, treasurer, *v.* Rude Bros. M'f'g Co., 30 North Eastern, 947.
Kuntz *v.* Sumption, treasurer, 117 Ind., 1.
Stuart *v.* Palmer, 74 New York, 188.
Hittell's Codes and Statutes of California, vol. 3, pages 34, 35, and 36; section 3664, page 177; section 3692, page 179.
Cooley on Taxation, 364, 365.
Desty on Taxation, vol. 1, 599, 600.
St. L., I. M. & S. R'y *v.* Worthen, 52 Ark., 529.
Adsit *v.* Lieb, 76 Illinois, 198.
Porter *v.* R. R. Co., *ibidem*, 561.
Pacific Hotel Co. *v.* Lieb, 83 Ill., 608.
Cin., N. O. & T. P. R'y Co. *v.* Commonwealth, 81 Ky., 511.
State *v.* Runyon, 41 N. J. Law, 104.
Mayor, etc., *v.* Davenport, 92 N. Y., 610.
State Railroad tax cases, 92 U. S., 575.
Kentucky Railroad tax cases, 115 U. S., 331.
L., N. A. & C. R'y Co. *v.* Boney, 117 Ind., 501.
Hannibal & St. J. R. R. Co. *v.* State Board, 64 Mo., 294.
Kansas Pac. R'y Co. *v.* Commissioners, 20 Kas., 141.
R. R. Co. *v.* Surrell, collector, 88 Ill., 535.
Republic Life Insurance Co. *v.* Pollak, 75 Ill., 298.
Case *v.* Dean, 16 Michigan, 12.
Sterling Gas Co. *v.* Higby, 134 Ill., 568.
I. & St. L. R. R. and C. Co. *v.* Stookey, coll., 122 Ill., 358.
Lowell *v.* Commissioners, etc., 152 Mass., 380.

662 (*b.*) That it does not deny to the owners of railroad property the equal protection of the laws, but on the contrary sufficiently and amply provides by law for their protection.

State Board of Assessors *v.* The Central R. R. Co., 48 N. J. Law, 276.
Hovey, gov., *v.* State *ex rel.* Riley, 119 Ind., 386.
Hovey, gov., *v.* State *ex rel.* Carson, *ibidem*, 395.
Gulf R. R. Co. *v.* Morris, 7 Kas., 210.
Francis *v.* The R. R. Co., 19 Kas., 303.
Dubuque *v.* C., D. & M. R. R. Co., 47 Iowa, 196.
L. & N. A. R. R. Co. *v.* The State, etc., 25 Ind., 180.
Home Ins. Co. *v.* New York, 134 U. S., 594.
Bells Gap R. R. Co. *v.* Pennsylvania, 134 U. S., 232.
State *ex rel.*, etc., *v.* Haworth, school trustee, etc., 122 Ind., 462.
Upshur County *v.* Rich, 135 U. S., 467.
Low *et al. v.* County Court, etc., 27 West Va., 785.
Munn *v.* Illinois, 94 U. S., 113.
Budd *v.* New York, 143 U. S., 517.
Hall *v.* De Cuir, 95 U. S., 485.
Missouri *v.* Lewis, 101 U. S., 22.
Soon Hing *v.* Crowley, 113 U. S., 703.
Barbier *v.* Connolly, 113 U. S., 27.
Wurts *v.* Hoagland, 114 U. S., 606.
Missouri, etc., Co. *v.* Humes, 115 U. S., 512.
Chicago & Northwestern R'y Co. *v.* McLaughlin, 119 U. S., 566.
Hayes *v.* Missouri, 120 U. S., 68.
Penbina Mining Co. *v.* Pennsylvania, 125 U. S., 181.
Dow *v.* Beidelman, *ib.*, 680.
Powell *v.* Pennsylvania, 127 U. S., 678.
Missouri, etc., Co. *v.* Mackey, 127 U. S., 205.
Walston *v.* Nevin, 128 U. S., 578.
Minneapolis, etc., R'y Co. *v.* Beckwith, 129 U. S., 26.
Louisville, etc., R. R. Co. *v.* Woodson, 134 U. S., 614.
Natal *v.* Louisiana, 139 U. S., 621.
Charlotte, etc., R. R. Co. *v.* Gibbes, 142 U. S., 386.
Horn Silver Mining Co. *v.* New York, 143 U. S., 305.

663 The act of March 6, 1891, is in accord with section 23 of article II, section 22 of article IV, and section 1 of article X, of the constitution of Indiana in that it does not give privileges to one class not belonging to all; is not a special law for the assessment of taxes, and in that it requires a uniform and equal rate of assessment and taxation and prescribes such regulations as shall secure a just valuation for taxation of railroad property required to be assessed. (See authorities cited *supra.*)

Jurisdiction—Collateral Attack.

Assuming that the law is constitutional and the board of State tax commissioners legally constituted, then its record kept in pursuance of the requirements of the statute is conclusive as against collateral attack.

Million *v.* Board, 89 Ind., 5.
McEneny *v.* Town of Sullivan, 125 Ind., 407.
Ryan *v.* Varga, 37 Iowa, 78.
Board *v.* Markle, 46 Ind., 96.
Cooper *v.* Sutherland 3 (Clarke), Iowa, 114.
U. S. *v.* Arredondo, 6 Pet., 691.
Railroad Co. *v.* Evansville, 15 Ind., 395.
Weir *v.* State *ex rel.*, 96 Ind., 311.
Eddy *v.* Wilson, 43 Vermont, 362.
Sykes *v.* Keating, 118 Mass., 517.
Halleck *v.* Boyleston, 117 Mass., 469.
School Dist. *v.* Atherton, 12 Met., 105.
Bradbury *v.* Benton, 69 Maine, 194.
Mayhew *v.* Dist. of Gayhead, 13 Allen, 134.
Cameron *v.* School Dist., 42 Vermont, 509.
Beebe *v.* Scheidt, 13 Ohio Stat., 406.
Pierce *v.* Wright, 45 How. Pr., 1.
Howland *v.* Eldridge, 43 N. Y., 457.
People *v.* Zeyst, 23 N. Y., 145.
Stephenson *v.* Bay City, 26 Mich., 44.
Hall *v.* People, 21 Mich., 456.
People *v.* Madison Co., 125 Ill., 334.
Same case, 23 Ill. App., 386.
Andrews *v.* Boylston, 110 Mass., 214.

664 1. The State board of tax commissioners, in assessing values upon railroad property, may act upon their own knowledge and judgment, without evidence other than the returns made by the railroad companies, and for the enlightenment of their judgment may seek information whence and in what manner they deem best.

K. P. R'y Co. *v.* Commissioners, 20 Kan., 141.
Case *v.* Dean, 16 Mich., 12.
R. R. Co. *v.* Surrell, 88 Ill., 535.
Pac. Hot. Co. *v.* Lieb *et al.*, 83 Ill., 602.
Porter *v.* R. R. Co., 76 Ill., 561.
Lowell *v.* Commissioners, 152 Mass., 380.
Sterling Gas. Co. *v.* Higby, 134 Ill., 568.
State R. R. tax cases, 92 U. S., 610.

In a proceeding to enjoin the collection of taxes, courts cannot inquire into the mental processes of the assessing officers for the purpose of determining as to whether their assessment was or was not

made upon a proper basis, and evidence addressed to such purpose is incompetent.

Republic Life Ins. Co. *v.* Pollak, 75 Ill., 298.
People *v.* Barker, 48 N. Y., 70.
State Railway tax cases, *supra;* Case *v.* Dean, 16 Mich., 12.

In assessing railroad track, the State board should take into consideration the whole road or system, within and without the State, its earning capacity, termini, and all other circumstances and facts connected therewith, which to them seem necessary, to enable them to fix the value of the property within their jurisdiction.

People *v.* Barker, 48 N. Y., 70.
State tax cases, *supra;* Porter *v.* R. R. Co., 76 Ill., 564, and cases cited.

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Attorneys for Appellee.

A. G. SMITH,
Attorney General.
J. W. KERN,
A J. BEVERIDGE,
W. A. KETCHAM,
For the State of Indiana.

665 And be it also remembered that on the 18th day of January, 1893, the appellee, by A. J. Beveridge, filed points for oral argument in said cause.

And be it also remembered that on the 21st day of January, 1893, The Indianapolis Union Railway Company, by A. C. Harris, its attorney aforesaid, filed a brief in said cause.

And be it also remembered that on the 23rd day of January, 1893, the appellant, by John T. Dye, its attorney aforesaid, filed a reply brief in said cause.

And be it also remembered that on the 30th day of January, 1893, the appellee, by his attorneys aforesaid, filed an additional citation of authorities in said cause.

666 And be it also remembered that on the 3rd day of February, 1893, the same being the 59th judicial day of the November term of said supreme court—present, Hon. Silas D. Coffey, chief justice; Hon. Walter Olds, Hon. James McCabe, Hon. Timothy E. Howard, Hon. Leonard J. Hackney, judges—the following proceedings were had in said cause:

Come the parties, by their attorneys, and the court, being sufficiently advised in the premises, affirms the judgment of the court below with the following opinion pronounced by Olds, J.:

667 This is a suit brought by the appellant against the appellee to enjoin the collection of taxes assessed against the appellant railway company by the State board of tax commissioners of Indiana.

The plaintiff is a corporation organized under the laws of Ohio and Indiana, and is and has been for several years engaged in the business of a common carrier of freight and passengers and in oper-

ating a system of railroads in the States of Ohio, Indiana, and Illinois, having various lines of railroads in Indiana, and its railroad track and rolling stock was assessed for taxation by the said State board of tax commissioners under the act of the legislature of Indiana approved March 6th, 1891.

The principal question involved in this case relates to the constitutionality and validity of the law under which the appellant's property was assessed, though around this question cluster some others which we will consider later on.

The act makes provision for the assessment of real and personal property by township and county assessors, creates a county board of equalization in each county in the State, and section 14 gives to such county boards "power to hear complaints of any owner of personal property except railroad tracks and rolling stock of railroads, to equalize the valuation of property and taxables," and provides that "'it shall pass upon each valuation, and may, on sufficient cause being shown or on its own motion, correct the assessment or valuation of any property in such manner as will in its judgment make the valuation thereof just and equal;" and provides that "appeals shall lie from the decision of any county board of review to the State board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decisions, which shall be final, to the proper county auditor."

In relation to the assessment of railway property the act
668 provides: SEC. 77. "Between the first day of April and the first day of June of the year eighteen ninety-one, and at the same time in each year thereafter, when required by the county auditor, any person, company or corporation so owning, managing, operating or constructing a railroad shall make and file with the county auditor of the respective counties in which the railroad may be located, a statement, or schedule, verified by the oath of such person, or the president and secretary of such corporation, showing the property held for right of way, and the length of the main and all side or second tracks and terminals in such county, and in each city or town through or into which the road may run, and describe such tract of land other than a city or town lot through which the road may run, in accordance with the United States or other surveys, giving the width and length of the strip of land held in each tract and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statements in April next after the location of their roads. When such statements shall have been once made, it shall not be necessary to repeat the description as hereinbefore required, unless directed so to do by the county auditor; but the company shall during the month of April annually report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way as shall have occurred."

SEC. 78. "Such right of way, including the superstructures main, side or second track and terminals, turn-table, telegraph poles, wires, instruments and other appliances and stations and improvements of

the railroad company on such right of way, (excepting machinery, stationary engines and other fixtures, which shall be considered personal property,) shall be held to be real estate for the purpose of taxation, and denominated 'railroad track,' and shall be so listed and valued, and shall be described in the assessment thereof
669 as a strip of land extending on each side of such railroad track and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses a boundary line in entering the county, township, city or town, tending to the point where such track crosses the boundary line leaving such county, township, city or town to the point of termination in the same as the case may be, containing — acres more or less (inserting name of county, township, city or town or boundary line of the same, and number of acres and length in feet) and when advertised or sold for taxes, no other description shall be necessary to convey a good title to the purchaser."

Sec. 79 declares that the railroad track shall be listed and taxed in the several counties, &c.

Sec. 80 declares that "the movable property belonging to a railroad company shall be held to be personal property and denominated for the purpose of taxation 'rolling stock;' such rolling stock shall be listed and taxed in the several counties, townships, cities, and towns in the proportion that the main track used or operated in such county, township, city, or town bears to the length of the main track used or operated by such person, company, or corporation, whether owned, operated, or leased by him or them in whole or in part."

Sec. 81 provides for the taxation of tools, materials for repairs, &c., in the county, township, city, or town where the same may be on the 1st day of April of each year, and sec. 82 provides for the taxation of all real estate of any railroad other than that denominated railroad track and improvements thereon, as lands and lots, in the county, township, city, or town where situated.

Sec. 83 declares that between the first day of April and the first day of June of each year "every person, company, or corporation owning, constructing, or operating a railroad in this State shall return to the county auditor a list or schedule, verified by the
670 oath of such person so owning, constructing, or operating, if an individual, or, if a company or corporation, by the oath of the superintendent or secretary of such company or corporation, which shall contain:

First. A full and correct detailed inventory of all the rolling stock belonging to or leased, hired, used, or operated by such company, and which shall distinctly set forth the number of locomotives and tenders of all classes, passenger cars of all classes, sleeping, chair, and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, freight cars, flat cars, pay cars, hand cars, tank or oil cars, and all other kinds of cars, and the true cash value thereof on the first day of April of the current year shall be set opposite each of them. Such list or schedule shall also set forth the number of miles of main track on which

such rolling stock is used in the State of Indiana. For the purpose of taxation such rolling stock leased or hired from persons or corporations other than the railroad companies shall be deemed the property of the railroad company leasing the same, and for that purpose shall be valued at such proportion of the full value thereof as the time during which the same is used on such railroad during the year bears to the whole year.

Second. Such list shall also contain a full and correct inventory of all other personal property of such railroad company not specifically taxed, including tools, etc., separated and classified into particular county, township, etc., where the same may be on the first day of April.

The third subdivision provides for an inventory of real estate other than that denominated "railroad track."

Sec. 84 makes it the duty of county auditors to return to the proper assessors a copy of the lists as contained in the second and third specifications to be assessed by such assessors, the same to be
treated in all respects in regard to assessments and equaliza-
671 tion as other similar property belonging to individuals. Section 85 reads as follows:

"At the same time that the lists or schedules as hereinbefore required to be returned to the county auditor, the person, company or corporation running, operating or constructing any railroad in this State shall, under the oath of such person, or the secretary or superintendent of such company or corporation, return to the auditor of state sworn statements or schedules, first, of the property denominated 'railroad track,' giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county and township and the total in the State. Second, the rolling stock, whether owned or hired, giving the length of the main track in each county and the entire length of the road in this State. Third, showing the number of ties in track per mile, the weight of iron or steel per yard used in the main and side tracks, what joints or chairs are used in the track, the ballasting of road, whether graveled, stone or dirt, the number and quality of buildings or other structures on 'railroad tracks,' the length of time iron or steel in track has been used and the length of time the road has been built. Fourth. A statement or schedule showing, 1st, the amount of capital stock authorized, and the number of shares into which such capital stock is divided. 2nd. The amount of capital stock paid up. 3rd. The market value, or if no market value, then the actual value of the shares of stock. 4th. The total amounts of all indebtedness except for current expenses for operating the road. 5th. The total listed valuation of all its tangible property in this State. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state."

Sec. 86 subjects the persons, companies, and corporations to a penalty for failure to file such reports.

Sec. 87 reads as follows: "The auditor of state shall annually, on
the meeting of the State board of tax commissioners lay be-
672 fore said board the statements and schedules herein required

to be returned to him, and said board shall assess such property in the manner hereinafter provided."

Sec. 117 creates the State board of tax commissioners. It provides that "immediately upon the taking effect of this act the governor shall appoint two skilled and competent persons, not more than one of whom shall be of the same political party, who, together with the secretary of state, auditor of state, and governor, the last three of whom shall *ex officio* be members and the governor chairman thereof, shall constitute and be a board to be denominated the State board of tax commissioners, who shall perform the duties and have the powers hereinafter specified.

Sec. 118 requires the governor to commission the persons so appointed, and that they shall each give bond, with sureties, in the sum of $10,000, and sec. 119 fixes the term of office of such commission. Of the members first appointed one shall hold for two and the other for four years, and thereafter they shall hold their offices for four years.

Sec. 120 and some of the sections next following prescribes the duties and powers of the board. The ninth subdivision of section 120 authorizes the board "to make such rules and regulations as the board shall deem proper to effectually carry out the purposes for which the board is constituted and to make all necessary rules and regulations not inconsistent with law as the board may deem necessary with respect to its own meetings and procedure."

Sec. 129 fixes the time and place of the meeting of such State board at the office of the auditor of state on the first Monday of August — each year "for the purpose of assessing railroad property and equalizing the assessment of real estate as provided in this act," and this section further provides that "the State board of tax commissioners is hereby given all the powers given to county boards of review."

673 Two of the principal reasons on which it is contended this act is void are, first, that it denies due process of law to railway corporations touching the assessment and valuation of their property denominated by the act "railroad track" and "rolling stock," and is therefore repugnant to and in conflict with sec. 1, art. 14, of the Constitution of the United States, declaring "Nor shall any State deprive any person of life, liberty, or property without due process of law," and sec. 12, art. 1, of the constitution of Indiana, providing that "every man for injury done to him in his person, property, or reputation shall have remedy by due course of law;" second, that the act is void for the reason that it denies to railway companies the equal protection of the laws granted to all other persons against erroneous, unjust, and illegal assessments of the value of property upon which taxes are assessed to be levied, in that it grants to all persons the right or privilege to be heard before some tribunal authorized to correct errors or give appropriate relief concerning the correctness or equality of assessment or inequalities in the same or mistakes of fact or law or illegal conduct of those charged with the duty of making the same after the original assessments have been made and before they become final and conclusive

as a protection against burdens imposed by such mistakes and errors; but as to railway companies the act utterly denies all protection whatever against the same boards against which others are protected, and therefore the act is in conflict with that part of the fourteenth amendment of the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, art. 14, U. S. Constitution.

We will consider these two objections to the validity of the statute in the inverse order from which they are stated. It is contended that railway companies are persons within the meaning of these provisions of the Constitution, and this contention must be conceded to be correct.

674 To determine whether or not railway companies are denied equal protection of the laws given by the act to all other persons we must first interpret the law and see what rights and privileges are given to them and to others and what burdens are likewise imposed on each, and see wherein the rights given to and burdens imposed upon others differ from those given to and imposed upon railway companies, for if no real discrepancy, within the meaning of the Constitution, in fact exists between the rights of railway companies and other persons, then the objection that the railway companies are denied equal protection of the law must fail. The fact that a wrong was committed in the execution of the law or that an error was committed and not corrected is no objection to the validity of the law.

As to property other than that denominated by the law as "railroad track" and "rolling stock," including all property, real and personal, of individuals, the law provides for its assessment by assessors, and it creates county boards of review in the several counties of the State, and by section 114, from which we have hereinbefore quoted, it is provided that such county boards "shall pass upon each valuation and may, on sufficient cause being shown or on its own motion, correct the assessment or valuation of any property in such manner as will in its judgment make the valuation thereof just and equal." This section, while it may not give to county boards the right to change individual assessments of parties not legally before the board, *it* evidently contemplates and gives the right to parties whose property has been wrongfully or erroneously assessed to voluntarily appear before such county board and show that the assessment made against any property is erroneous and have it corrected, and it vests in such county boards the power, on such showing being made or on their own motion, to make corrections and change the valuation, and from a decision made against a party who is before such county board it gives an appeal to

675 the State board of tax commissioners, whose decision upon the question shall be final.

By section 129 of the statute, from which we have heretofore quoted, this same right to be heard given to all property-owners and the power vested in the county boards of review to correct and change assessments by section 114 is engrafted into and made a

part of the law governing the proceedings before the State board as to valuations and assessments over which such State board has jurisdiction and control, for by section 129, *supra*, it is declared that the State board is hereby given all the powers given to county boards of review. The right of parties to be heard and the right of the county boards to have showings as to assessments and to correct and change assessments and valuations are a part of the powers vested in county boards, and all their power is transferred and vested in the State board, so that if there is any power in the county boards to hear grievances and make corrections in relation to property and assessments over which they have jurisdiction, then the State board has the same power in relation to property and assessments over which it has jurisdiction. Counsel claim and argue that this right of hearing and to make corrections exists before the county boards, and we think it does, but they insist that this right does not exist before the State board, but with this latter contention we cannot agree, for certainly by the words of the statute we have quoted the same power in this respect is vested in the State board as is vested in county boards in relation to property and assessments over which it has jurisdiction, and if the State board has jurisdiction over the property and assessments of railway companies denominated "railroad track" and "rolling stock," then railway companies have the right to be heard and the State board has the right to correct any assessment and valuation made in relation to such property. That the State board has such jurisdiction and right we think there can be no doubt. By section 87 it is made the duty of the State board to assess such property in the manner afterwards in the
676 act provided. Section 129 provides, among other things, for the meeting of the State board and fixes the time and place of meeting for the purpose, as stated, "of assessing railroad property."

By the 9th subdivision of section 120 it is made the duty of the State board to make such rules and regulations, not inconsistent with law, as it may deem necessary with respect to its meetings and procedure.

We think the interpretation we have placed upon the statute the fair and reasonable interpretation to be given to it.

It is well settled by the rules for the construction of the statutes that in construing statutes the prime object is to ascertain and carry out the purpose and intent of the legislature; that in construing statutes courts will look to all parts of the same statute, to other statutes, and to the general principles of law, and assign such meaning to the words of the statute construed as will make them all effective.

Storms *vs.* Stevens, 104 Ind., 46.
C. & S. W. T. Co. *vs.* Fletcher, 104 Ind., 97.
Hunt *vs.* L. S. & M. S. R. Co., 112 Ind., 69.

In Lutz *vs.* The City of Crawfordsville, 109 Ind., 466, it is said: "If the legislature manifests an intention to create a system for the government of any subject, it is the duty of the court to

effectuate that intention by such a construction as will make the system consistent in all its parts and uniform in its operation.

Bishop on the Written Laws states the rule of the court in relation to statutes to be that the courts will presume the legislature intended its acts to be reasonable, constitutional, and just, and when possible consistently with any fair rendering of the words will so construe them as not to make them otherwise."

A statute which will admit of two interpretations, one valid and the other invalid, will receive the interpretations sustaining its validity.

Ferguson *vs.* Borough of Stanford, 23 Atl. Rep., 782; 60 Conn., 432.

677 In the case last cited the supreme court of Connecticut said: "A statute which will admit of two interpretations—one just and valid; the other unjust and invalid—will ordinarily receive the former. It is no part of the duty of the court to be astute in order to invalidate a statute. It will rather strive to so interpret it as to sustain its validity and give effect to the intention of the legislature."

Boisden *vs.* Citizens' Bank, 29 American Dec., 453.
Bloodgood *vs.* Mohawk, etc., R. R. Co., 31 Am. Dec., 313.
Santo *vs.* State, 63 Am. Dec., 487.

Any other construction than that which we have given to the words of section 129 of this act, providing that "the State board of tax commissioners is hereby given all the powers given to county boards of review," would render the words meaningless, and this is never to be done if it can be avoided. It is a well-recognized rule that the entire statute must be construed together and effect must be given to every part of a statute if it can be done without manifestly violating the intention of the legislature.

Smith *vs.* Randall, 65 Am. Dec., 475.
B. & I. R. R. Co. *vs.* Gregory, 58 Am. Dec., 589.
Perkinson *vs.* State, 74 Am. Dec., 522.
Montesque *vs.* Heil, 23 Am. Dec., 471.
Gates *vs.* Salmon, 95 Am. Dec., 139.

The question as to whether any of the other powers attempted to be conferred by sec. 114 on county boards are by sec. 129 vested in the State board, which would authorize the State board to serve notice and change or increase valuations and assessments on property valued and assessed by assessors or county board, is in no way involved in this case, and hence we indicate no opinion in relation thereto.

The statute, when viewed in the light of the construction we have placed upon it and to which it is clearly entitled, provides for the assessment of property other than "railroad track" and "rolling stock" by assessors and county boards of review, and provides that persons aggrieved may appear before county boards of review and make a showing, and vests in such county boards the power, either on such showing or on their own motion, to correct errors

made in any assessment, and further provides for appeals from the decisions of the county boards by parties aggrieved and
678 a hearing by the State board on appeal, which is final. In relation to property denominated "railroad track" and "rolling stock" it provides for the filing by railroad companies of a complete statement in relation to such property and its value with the auditor of state, which shall by such auditor be laid before the State board. It further authorizes the State board and the members thereof to gain further information concerning such property and its value and to assess it at its true cash value, and that in making such assessment such State board shall not be bound by any reports or estimates of value of railroad property, real estate, or other property as returned to the county auditors or auditor of state, and that such State board shall have power to correct any assessment of "railroad track" or "rolling stock" on showing or on its own motion. The difference existing in relation to the assessments of the various classes of property under the law is that the assessment of some classes of property commences with the value being first fixed by the assessor, with authority vested in the county board to hear the complaints of aggrieved parties and correct the assessment, and a right on the part of the property-owner to take an appeal to the State board. In the case of railroad companies, — their property denominated "railroad track" and "rolling stock," the schedule is filed with the auditor of state and the assessment is made in the first instance by the State board, and their right to make a showing and to have any errors made against them corrected is to the same board that made the assessment, and that board is vested with power to correct errors and change assessments and valuations of such property in such manner as will in their judgment make the valuation thereof just and equal.

Secs. 114, pp. 246–248, Acts of 1871.

When stripped of all verbiage the gist of the objection to the law on account of its not affording to railway companies in the assessment of the property denominated "railroad tracks" and "rolling stock" equal protection of the law is that the State board
679 of tax commissioners, the highest body or board in the State having jurisdiction or which is given authority to either assess or correct assessments of property, is given original jurisdiction in the assessment and valuation of this class of property, while it acquires jurisdiction in other classes of property by appeal. Under the act the assessment and valuation fixed upon property is not necessarily final until passed upon by the State board. If parties are content with an assessment upon their property by the assessor or county board it may rest at that point, but an appeal may be taken to the State board.

It seems to us that the claim that the statute denies to railway companies the equal protection of the law is based on an erroneous construction of the statute, for with the view we take of the statute and the rights of railway companies under it the claim that it denies equal protection has no substantial foundation to rest upon.

Equal protection of the law does not require that all persons shall have the right of a hearing or trial before the same tribunal and in all the same tribunals and having the same right of appeal from one to another. If it has any such interpretation, then the theory upon which our courts are constructed and given jurisdiction in various causes of action, the right of appeal given in some cases, others not, and the jurisdiction of some courts, made final in one class of cases and in others not, is all wrong, and our system of jurisprudence must fall; but that such is not the theory or interpretation to be given to sec. 1, article 14, of the Constitution of the U. S. is too clear to admit of argument or the citation of authority. In our system of jurisprudence courts of different grades and jurisdictions are established, and an appeal is allowed from one to another only when the right of appeal is given by statutory enactment.

In United States *vs.* Crookshank *et al.*, 92 U. S., 542, Chief Justice Waite, delivering the opinion in discussing the provisions of the fourteenth amendment, says: "It prohibits a State from
680 depriving any person of life, liberty, or property without due process of law; but this adds nothing to the rights of one citizen against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society." Following this he says: "The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not any more than the one which precedes it and which we have just considered add anything to the rights which one citizen has under the Constitution against another. The quality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States and it still remains there."

From this it would seem that this phrase in the amendment added but little to what had theretofore been assumed by the States and embodied in the words due process of law, and in the case of Caldwell *vs.* Texas, 134 U. S., 692, Chief Justice Fuller, in delivering the opinion of the court, said: "By the fourteenth amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under the law, * * * and due process is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

It must follow that a law which operates alike upon all persons under like circumstances is not obnoxious to the provision in the fourteenth amendment to the U. S. Constitution that no person shall be denied the equal protection of the laws, for such a law operates alike upon every person under like circumstances. If
681 this were not true, then a large portion of the legislation of

the various States, universally held valid, would be obnoxious to this provision of the Federal Constitution. Laws providing for the assessment of certain property for public improvements only affect such property as designated, and persons owning no such property are unaffected by the law; but all who are in like circumstances may be affected by it, and therefore the law affects all equally under like conditions and circumstances.

The statute in question provides a general system for taxation and assessment and valuation of property and the method of ascertaining the valuation and assessing each class and kind of property applies alike to all persons holding and owning the same class of property, and it applies alike to all persons under like circumstances and conditions, and we do not think it denies railway companies the equal protection of the laws, and it is not in conflict with this provision of the Federal Constitution.

Is the act objectionable on the grounds that it denies to railway companies due process of law? If this act is repugnant to either the constitution of this State or the Constitution of the United States for this reason, it would seem that almost any law for the assessment and taxation of property which stopped short of resorting to a court of justice and permitting an issue to be joined and tried as to the value of the property would be likewise objectionable. This act requires railway companies to first file verified inventories of their property and of its value to be submitted to the assessing board. Then it allows after assessment a correction in assessments and valuation on the showing of the company or on the motion of the board itself.

Judge Cooley, in his work on Taxation, 2nd ed., 432, says: "Very summary remedies have been allowed in every age and country for the collection by the Governmen tof its revenues. They have been considered a matter of State necessity. Without them it might be possible for a party which had been defeated in its efforts to
682 obtain possession of the Government in the constitutional way to cripple the Government for the time being and possibly break it up altogether. If the State might be deprived of the resources for continuing its existence and performing its regular functions until a revenue could be collected by the process provided for the enforcement of debts owing to individuals it would be continually at the mercy of factions and discontented parties. Obviously this could not be tolerated."

At page 47 the author says: "This is a constitutional guaranty which has come to us from Magna Charta, which declares that no person shall be deprived of life, liberty, or property except by the judgment of his peers or the law of the land. The alternative provisions of this guaranty have sometimes been supposed to mean the same thing and the guaranty itself to entitle every person to have any demand made upon him submitted to the determination of a jury of the vicinage. Such a construction applied in tax cases would work a thorough and radical change in the principles on which taxation is now supposed to rest." * * * Such a construction of a clause agreed upon as an important provision in a charter

of government can never have been intended. The words the "law of the land" and "due process of law" mean one and the same thing and mean that one shall hold his life, liberty, and property under the protection of the general rules which govern society, and therefore the learned author from which we have quoted, on page 48, in speaking of words "the law of the land," well says: "The clause recited from Magna Charta does not imply the necessity for judicial action in every case in which the property of the citizen may be taken for the public use. On the contrary, a legislative act for that purpose, when clearly within the limits of legislative authority, is of itself the law of the land."

This is true not only of an act levying taxes, but in everything which pertains to the assessment and collection of taxes.

Judge Cooley in his work recognizes the right of a party to a hearing before his rights are finally precluded, and it is only necessary to determine what constitutes a hearing so as that
683 the individual will not be deprived of his property without due process of law, or what is the character of the hearing contemplated in the assessment and collection of taxes so as to constitute due process of law. Certainly it is not a judicial procedure—a trial by jury—but a summary hearing that is contemplated in such proceedings. Judge Cooley, 747, Cooley on Taxation, *supra*, says that the assessor, while he still has the list or roll in his hands uncompleted, may correct any assessment on his own motion on an application when satisfied that it is either wholly or in part illegal, and that no statute could be necessary to give to him such power. By this rule the State board who assess "railroad track" and "rolling stock" while in session and having control of the assessment could remit any illegal or unjust assessment made against any railway company in the absence of any express statutory authority giving them the right to do so, but he says taxing officers and boards of review in the absence of special authority are to accept the assessment as legal and just, and levy and collect the taxes accordingly. The taxing officers and boards are such as have no power to assess, and he states the remedy usually given by statute for the correction of errors is by review, either by the assessor himself or in some form of appellate proceedings. The rule as recognized by Mr. Cooley is that if the individual have the right to a hearing either before the assessor himself or some reviewing board having the right to correct the assessment that the requirements of the Constitution *is* complied with and the individual is not denied due process of law.

In Hann. and St. Joe R. R. Co. *vs.* State Board of Equalization, 64 Mo., 294, it was held that, the State board having power to assess railway property, the assessment would be valid even though their record showed that the board heard no evidence. In the same case it was held that under the laws of that State every person had an appeal from the assessment of his property for taxation, and
684 that railroad companies should have the same right, and that great injustice might be done by the board, for which they would be remediless until the legislature had provided for an

appeal in their favor, and that the courts cannot interpose between the board and the companies.

In Porter *vs.* The Rockford, R. I. & St. L. R. R. Co., 76 Ill., 561, speaking of the assessment of the property of railway companies by the State board of equalization under a law very similar to the statute under consideration, the court says: "Whether property is assessed by local assessors or by the State board of equalization it is, in the language of the constitution, assessed by some person or persons elected or appointed in the manner the General Assembly has directed, and not otherwise. No attempt is made by this clause of the constitution to limit the number of those who shall be elected or appointed for this purpose or to prohibit or in any manner to prescribe how the value of property shall be ascertained by them. Admitting that the chief end had in view was to secure uniformity in valuation, it would seem that the present system, by which some property is assessed by local assessors and other property is assessed by the board of equalization, would tend as much toward accomplishing that result as would a system by which all the property in the State should be assessed in the town in which it is located by the local assessor. * * * We cannot believe that a board of equalization having the assessed values of all other taxable property in the State before them for the purpose of equalization has less facility for fixing a fair proportionate value upon corporate property than the local assessors have.

"There is, moreover, an almost insuperable difficulty which must attend all attempts by local assessors to assess the capital stock, franchise, roadway, and rolling stock of most railroad companies. Such roads are usually located through several counties. The cost of construction in a particular town or county affords no criterion of the value of that portion of the road, for every mile of the road is equally indispensable to its existance as a whole and contributes proportionally to its principal earnings. Local improvements may indeed vary, and they are required to be assessed by the local assessors, but the road and its equipments constitute a single entire property. In determining the value of such property the question is neither one of original cost nor of the intrinsic value of the various items of which the road and its equipment are composed, taken separately, but what is it worth with all its capabilities and facilities as a railroad. The franchise extends to the entire corporate property, and it is not possible that it can be divided. It must, if assessed at all, be assessed as an entirety, and this, as we have already shown, may be in connection with the property to which it is attached."

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Sec. 1, art. 10, of the constitution of this State vests the power of taxation in the General Assembly. It provides that "the General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting," &c.

The first clause of this section is certainly complied with when the same basis of assessment is fixed for all property and the same rate

of taxation is fixed within the district subject to taxation—that is to say, there is uniformity and equality of assessment and taxation when all the property is to be assessed at its true cash value and the same rate is fixed on all property subject to assessment for the tax. If it be a tax for State purposes the rate must be the same throughout the State; if for county purposes or township purposes the same rule would apply. The law under consideration is not subject to objection on account of inequality in rate of assessment or taxation, for it provides that all property shall be assessed at its true cash value, and the rates are the same
686 within the respective taxing districts, and no objection is urged to the law on this account.

Gilson *et al. vs.* The Board of Commissioners of Rush County, 128 Ind., 65.

As to the latter clause of the section of the constitution providing that the General Assembly "shall prescribe such regulations as shall secure a just valuation for taxation," it leaves it to the legislature to prescribe the mode by which the valuation of all property shall be ascertained, enjoining upon them the one obligation to provide such regulations as shall secure a just valuation, the leaving to the legislature the mode of ascertaining the valuation. There is certainly no reason why the legislature may not, under the constitution of the State, provide for fixing the value of "railroad track" and "rolling stock" of railway companies by the State board of tax commissioners while other property is assessed by local boards. The value is ascertained according to the regulations prescribed by the legislature, and we are unable to see any reason why a valuation secured in that way should not be a just valuation. The legislature by the act in question has prescribed regulations for the purpose of securing the valuation of all property for taxation. The method prescribed would seem to have in view the fixing of the value on property by persons and boards best calculated to know the value of the property required to be valued by them and with a view of arriving at a just and equal valuation of all the property within the State subject to taxation, providing county boards of review to correct errors of local assessors and then a State board to fix the value of the property of railroad companies extending through the State and to equalize the valuations and assessments of property throughout the State. That the method prescribed in the act is one calculated to secure a just and equal valuation and assessment of property throughout the State cannot be reasonably questioned and is one which the legislature had the right to adopt.

Lowell *vs.* Com'rs, etc., 152 Mass., 380.
687 St. L., V. & T. H. R. R. Co. *vs.* Surrell, 88 Ill., 535.
Republic L. I. Co. *vs.* Pollak, 75 Ill., 298.
Case *vs.* Dean, 16 Mich., 12.
State Railroad Tax Cases, 92 U. S., 575.

No notice other than that contained in the law itself is necessary to the validity of the assessment. The railroad compa-

nies are bound by the law and must take notice of its provisions. They submit a schedule to the State board through the auditor of state for the very purpose of having the valuation fixed upon the property and the assessment thereof by such board. They, through their written schedule and statement of values, are heard by the board. The board has under its control the assessment-roll of railroad companies' property, and by the terms of the statute the board is given power to correct any errors in assessments and to change valuations on showing or on its own motion. Railway companies have the same right of a hearing before the State board that any other property-owner has before the county board, for the same powers to correct errors in assessments of property over which the respective boards have jurisdiction which are given to the county boards by the act are given to the State board. The State board is required to make rules governing their meetings and procedures.

In Hyland, auditor, *et al. vs.* The Brazil Block Coal Co., 128 Ind., 335, it is held that when the time for the meeting of a county board of equalization is fixed by law and the duties of the board also fixed by law, and notice of the time of meeting of the county board as required by law has been given, and when the law required that corporations should make out and deliver to the assessor schedules of their property to be delivered to such county board, and the law made it the duty of such board to value and assess the property of such corporations, that no notice to the individual corporation was necessary to make the appraisement and assessment of the property of the corporation valid, the law having fixed the time of the meeting
688 of — board and requiring corporations to file schedules with the assessor to be presented to the board and made it the duty of the board to appraise and assess the same. Corporations were bound to take notice of the time of the meeting of the board that these schedules would be presented to the board and such board would appraise and assess the same as required by the law, and no other notice is necessary. There can be no difference in this respect as to the validity of a law, or the rights of the parties under it, between a statute which fixed the time for the meeting of the board and one which fixed the time and also required the auditor or some other officer to give notice of the time of the meeting in advance, for if the law fixed the time of the meeting all persons are bound to take notice that it will meet, and when it requires a party to file a schedule of his property and makes it the duty of the board to appraise and assess it he is likewise bound to take notice of such facts also, and if he desires to be heard in relation to such matters as the board are charged with the duty of performing he must appear and make his wishes known in relation thereto. As well said in Hyland *vs.* The Brazil B. C. Co., *supra:* "The case is entirely unlike that of an individual tax-payer, for he cannot know that the board will take any action upon his list, whereas the corporation knows, as matter of law, that the board will act upon its statement, since that is the principal purpose for which the sworn statement is required. It is manifest that neither the principle decided in

Kuntz *vs.* Sumption, *supra*, nor the line of reasoning there pursued is relevant to the question here presented."

The statute under consideration fixes the time for the meeting of the State board. It requires railway companies to file schedules and inventories with the auditor of state to be presented by him to the State board, and makes it the duty of the State board to appraise and assess the property denominated by the act as "railroad track" and "rolling stock" belonging to railroad companies at its true cash value, and further provides that the
689 board shall not be bound by estimates of the value of such property as returned to the auditor of state. Of all of these provisions the railway companies are bound to take notice, and if they desire to make any further showing it is the duty of such companies to appear before the board and make their showing.

In Cooley on Taxation, p. 364, 5, it is said: "It is not customary to provide that the tax-payer shall be heard before the assessment is made except when a list is called for from him, but a hearing is given afterwards, either before the assessors themselves or before some court or board of review."

That is just what is provided for by the act of 1891. The companies are required by the law to submit a schedule through the auditor of state to the State board and authorizes a hearing before the State board. As regards notice of the meeting of the board before a hearing may be had the author in the same section, continuing, says: "And of the meeting of that court or board the tax-payer must in some manner be informed, either by personal notice or by some general notice which is reasonably certain to reach him or, which is equivalent, by some general law which fixes the time and place of meeting, and of which he must take notice. The last is a common method of bringing the assessment to the notice of the tax-payer, and it is perhaps the best of all, because it comes to be generally understood and is remembered."

This principle is common in its application. When a party brings an action in court the defendant is notified to appear on a certain day of a particular term of court. The term at which the summons is returnable or for which the notice is given terminates without a disposition of the cause. The cause is still pending in court, to be heard at a subsequent term of court. All parties are bound to take notice of the time fixed by the law for the holding of subsequent terms of court. The matter of appraisement and assessment of the property of railroad companies is pending before the State board and parties are bound to take notice of the time fixed
690 by law for the meeting of the board and is in harmony with the theory that all persons are presumed to know the law.

Desty on Taxation, vol. 1, pp. 599 & 600, says: "All parties are bound to take notice of the day of the meeting of the commissioners when the day is appointed by law, and under the general notice parties must attend the meetings as they would the sessions of a court until their assessment is passed upon, and when once this is done no change can afterwards be made without special notice."

The whole body of tax-payers are not required to attend a sit-

ting of a county or State board of review, for the value is fixed upon most by the assessor, but such as are required to file with such boards or either of them a schedule of property, which property so scheduled is to be appraised and assessed by such board. As to such parties the matter of appraisement and assessment is pending before such board, the knowledge of which is conveyed to them by the law itself, and if they desire to be heard further or to have errors corrected they must appear before such board.

Smith, county treasurer, *vs.* Rude Bros. Man'f'g Co., 30 N. E., 947.

The conclusion we reach is that the statute under consideration is a valid enactment and not in conflict with any provisions of the Constitution, either of this State or the United States, and the State board of tax commissioners had full power to assess the property of railway companies denominated "railroad track" and "rolling stock;" that the railway companies were properly before that board and were entitled to a hearing and were not denied due process of law or equal protection of the laws within the meaning of the Constitution of this State or the United States, and this conclusion, we think, is in harmony with the almost universal line of authorities and we deem it unnecessary to take up and discuss in detail the numerous authorities cited in this case, as it would extend the decision to an immeasurable length, and we content our-
691 selves by adhering to what we regard the correct principles deducible from the authorities.

The State board having fixed the valuation and assessed the property, their action in this behalf is final and cannot be avoided or set aside except for fraud on the part of the State board of tax commissioners, which would render the assessment void. Fraud vitiates even the most solemn judicial proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties, but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the State board of appellant's property on the ground that the State board was guilty of fraud or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies, and if it were so contended the averments of the complaint fall far short of being sufficient to prevent such a question.

What we have said disposes of the major portions of the questions presented in the case. The court having no power to review the proceedings, the action of the State board being final, no right of action existed to set it aside except for fraud, and, it not being attacked on that ground, no evidence was admissible, for it is a well-settled rule that the courts have no power to give any relief against erroneous assessments of such boards except they are given such power by statute, and no such power is given in this State.

Cooley on Taxation, p. 748, and authorities there cited.

Bass *et al. vs.* The City of Fort Wayne *et al.*, 121 Ind., 389.

Sims *vs.* Hines, 121 Ind., 534.

McCollum *et al. vs.* Uhl, 128 Ind., 304.

The C. & W. G. R. Co. *vs.* Black, 32 Ind., 468.

The court cannot inquire what evidence the board made its assessment upon and determine as to whether such board arrived at just valuation or not. The board has passed upon that question, and with its adjudication the matter ends.

692 The decision of the State board being final, the record of that board required to be kept by the law, section 121 of the act — 1891, is conclusive.

It is contended by counsel for appellant that the law authorizes and the State board did impart values to the "railroad track" and "rolling stock" taxable in Indiana, values belonging wholly to corporate property situate in other States and taxable in other States, thus imposing double taxation on railway companies owning or operating interstate lines of railways. This is based upon the provision of the statute, sec. 80, of the act providing that the "rolling stock" shall be listed and taxed in the several counties, &c., in proportion that the main track used or operated in such county, &c., bears to the length of the main track used or operated by such person, and the schedules required to be filed by sections 83 and 85. These schedules are required to be filed for the purpose of giving a description to the property and as a source of information as to value, but, as expressly provided by the act, such values are not conclusive. The board may act on other information and the personal knowledge of values, and the act expressly provides that the assessment shall be made of this class of property at its true cash value, the same as all other property.

Section 79 provides that railroad "track" shall be listed and taxed in counties, &c., in proportion that the length of main track in such county, &c., bears to whole length of the road in the State. It is so apparent, and, we think, so well settled by authority, that the value of a railroad or "railroad track" and "rolling stock" is so completely dependent on its length of line, connections, beginning, and terminus and the character of the country through which it runs, in relation to its products, and the character and extent of its population, so as that it cannot be separated from these and many other surroundings and elements of value which necessarily must enter into its appraisement and assessment at its fair cash value for

693 taxation, as that it can hardly be a controverted proposition.

It is evident that no fair or equitable value could be placed on a "railroad track" by severing it into parts extending from one township or county line to another, or even from one State line to another, and estimating only the portions lying within the borders of a single township, county, or State, independently of its connection beyond such lines or by considering the costs of constructing any such division, nor could the value of an engine or car or other property coming within the class of property denominated in the act under consideration as rolling stock be determined by considering the purpose for which it was used in any State or subdivision of a State or the costs of construction of the same, and to limit the right of the State to tax "rolling stock" which might, at the date of assessment, be found within the State or subdivision of the State would be, in effect, to release such property from taxation.

A railroad is valuable as a whole and every section of the line going to make up the whole is essential. The portion of a track crossing unreclaimed land of practically no value is as valuable as that portion which runs through a populous city, in so far as its purpose and use is that of an interstate line, for without either the connection would be broken and its use destroyed for that purpose. The value of such portion is increased by reason of its connection.

In the State Railroad tax cases, 92 U. S., 575, the court says: "This court has expressly held in two cases where the road of a corporation ran through different States that the tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise and the length of the road within each State as the basis of taxation."

In speaking of rate — taxation the court, in the same case, says: "But the contention is that the rule of treating the road, its rolling stock and franchises, as a unit and assessing it as a whole, on
694 which each municipality levies its taxes according to the length of the road within its limits, violates the principle of this section. We have already discussed this question and are of the opinion that taxes assessed by that rule on the railroad property by the municipality are uniform where the rate of taxation is the same on the assessment thus ascertained that it is on other property."

The court, in the case last cited, expressly recognizes the legality of an assessment on rolling stock valued in accordance with the rule of treating the road as a unit and taking such a proportion of its value as the length of the road lying within the State bears to the whole road, for if an appraisement and assessment of a railroad, including in such valuation its rolling stock and franchises, can be assessed, certainly its rolling stock can be valued and assessed separately in the same manner, for values would not be imparted in the one method more than the other. The court in the same case discuss and sustain the same method of assessing the railroad track, and say: It may well be doubted whether any better mode of determining the value has been devised.

The decision in The Western Union Telegraph Co. *vs.* Massachusetts, 125 U. S., 530, is in harmony with this theory.

Presumptively the line of railroad track and rolling stock is of no greater value per mile beyond the borders of the State than within the borders of the State, and we do not think the law necessarily requires a construction by which, if the line of the railroad track or rolling stock situate outside the State was of greater value per mile than that inside the State, that the board should, by equalizing the value, import values and tax property situate and taxable without the limits of the State and taxable in another State. When the whole act is read together it purports to be only an act to tax such property as is subject to taxation within the State. Section 80 declares that the movable property belonging to a railroad company shall be held to be personal property and denominated personal property, while section 3 provides
695 that "all property within the jurisdiction of this State not expressly exempted shall be subject to taxation." Section 4

provides that for the purpose of taxation real property shall include all lands within the State, etc. Personal property shall include all goods and chattels within the State, all ships, boats, whether at home or abroad, and their appurtenances; all goods, chattels, and effects belonging to inhabitants of this State situate without this State, except the property actually and permanently invested in business in another State.

The record of the State board, which, as we have said, is conclusive, affirmatively shows that the valuation of "railroad track" and rolling stock was fixed upon such property within this State. The record affirmatively shows that "the State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State;" then follows the schedule and valuation. Following such schedules and valuation it is stated that, "making liberal allowance for all proper deductions," they "fix the values," as hereinbefore set forth.

Objection is made to a recital in the record of the board which it is contended shows affirmatively that the board fixed the value of the roads upon a wrong basis. We think there is nothing in this objection. It is a mere statement that in "arriving at the basis for the estimate of said values the board considered the cost of the construction and the equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same." They considered all matters appertaining to the road that would assist them in arriving at a true cash value. The things they specifically enumerate were proper to consider. The board was not limited to the schedules of the railway companies and rates fixed by them, but had the right to such other information which would enable
696 them to arrive at a just valuation. But this court cannot consider or review the question as to what evidence the board acted upon in arriving at the value assessed.

It is further urged that the method of assessment taxes interstate commerce, but we do not think so. Taxing the property of a corporation engaged in interstate commerce is not taxing interstate commerce, but what we have heretofore said disposes of this question, for in holding the method by which the valuation and assessments were made valid relieves it from this objection.

As it cannot and is not contended that the property is not subject to taxation, but only contended that it cannot be assessed in the manner prescribed in this act, which it is claimed imparts values into this State from other States for taxation, thereby imposing unauthorized burdens on interstate commerce.

It is finally contended that the act creating the State board and defining its powers and duties is unconstitutional and void for the reason, in brief, that judicial powers are granted to such board, and because two State executive and administrative officers are created and made continuously appointed by the governor and not elected by the people; that executive and administrative officers cannot

exercise judicial powers and judicial officers must by the Constitution be elected. The members of the State board are not judicial officers nor are judicial powers conferred upon them by the act under consideration within the meaning of the Constitution.

Langenberg *vs.* Decker, 31 N. E., 190.

It is very common, if not an almost universal custom in this and other States to make by statutory enactment certain of the State officers *ex officio* members of the State boards of equalization.

697 Such, we think, has been the almost, if not the unbroken practice in this State since the adoption of the present constitution, and if, as held in Langenberg *vs.* Decker, *supra*, they are not vested with such judicial powers as to constitute them a court, but only exercise such quasi-judicial functions as does every public officer vested with discretionary power, they are certainly eligible to become a member of such a board. Nor do we think the other members of the board whom the law provides shall be appointed by the governor are administrative State officers charged with such duties as that by the constitution they are required to be elected by the people. They are not administrative officers in charge of any separate department of the State government. The same rule must govern in relation to their selection as the selection of members of the local and county boards of equalization and any persons or boards for the appraisement and assessment of values and benefits and injuries to property, and the practice of appointing such persons and members of boards has always existed. If they may be appointed for one sitting of a board or to make appraisement of specific property the value of which is to be ascertained, then certainly the law may authorize their appointment for a longer term, and that such appointment may be authorized by statute we have no doubt, and this conclusion is in harmony with the decisions of this court in The State *ex rel.* Collett *vs.* Gorby, 122 Ind., 17, and The State *ex rel.* Yancey *vs.* Hyde, 129 Ind., 296.

We have considered and decided all of the questions material to the determination of the cause. We find no error in the record.

Judgment affirmed.

698 It is therefore considered by the court that the judgment of the court below in the above-entitled cause be in all things affirmed at the cost of the appellant.

And it is further considered by the court that the appellee recover of the appellant the sum of — dollars for his costs and charges in this behalf expended.

699 Be it further remembered that afterwards, to wit, on the 22nd day of February, 1893, the same being the 75th judicial day of the November term of the supreme court of Indiana for the year 1892, the following further proceedings were had in said cause:

Come again the parties, by their attorneys, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company filed in this cause in this court its assignment of errors; which assignment of errors is in the words and figures following, to wit:

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, Defendant in Error.

In Error in the Supreme Court of the United States.

Assignment of Errors.

The plaintiff in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, says that there is manifest error in the judgment and decision of the supreme court of Indiana in this case in this:

First. The supreme court of Indiana erred in holding and adjudging that the act of the legislature of the State of Indiana concerning taxation, approved March 6, 1891, "is not in conflict with any provisions of the Constitution, either of this State or the United States."

Second. The supreme court of Indiana, in its decision and judgment rendered in this case, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana concerning taxation, approved March 6th, 1891, relating to and providing for the assessment and valuation
700 for taxation of the railroad track and rolling stock of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error herein, and all other like corporations do provide for and secure to the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company and other like corporations due process of law required by section 1 of the 14th amendment to the Constitution of the United States, touching the assessment and valuation of their railroad track and rolling stock properly and lawfully subject to taxation in Indiana.

Third. The supreme court of Indiana, in its opinion and judgment rendered in this case, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana concerning taxation, approved March 6th, 1891, relating to and providing for the assessment and valuation for taxation of the railroad track and rolling stock of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error herein, and other like corporations do not deny to the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company and other like corporations the equal protection of the laws required by section 1 of the 14th amendment to the Constitution of the United States, touching the assessment and valuation of their railroad track and rolling stock properly and lawfully subject to taxation in Indiana.

Fourth. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the act of the legislature of the State of Indiana concerning taxation, approved March 6th, 1891, did give to plaintiff in error the right and opportunity to be heard for the correction of errors, mistakes, and overvalues in the assessment of plaintiff's railroad track and rolling stock after the State board of tax com-

missioners agreed upon its assessments and valuations thereof before the same were made final, for the following reasons: First, because said act limits the session of said board to forty days, and does not require said board to make or announce any assessment and valuation of railroad track and rolling stock
701 prior to the last day of its session, or to give to railroad companies any notice whatever of the amount of such original assessment, and does not give to railroad companies any right or opportunity after the making of such original assessments to file any complaint or any petition to correct errors in such original assessments, and does not secure to railroad companies any right or any opportunity to be heard in any proceeding before said board or any other appropriate tribunal for the correction of mistakes and errors and overvalues in such original assessments, thereby enabling said board to prevent the possibility of any hearing for the correction of errors, mistakes, or overvalues made by said board in the assessment and valuation of railroad track and rolling stock, and denying the railroad companies any right or opportunity whatever to file any complaint or petition or have any hearing touching the correctness of such original assessment.

Fifth. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the State of Indiana, acting through its public officers, the State board of tax commissioners, did not deny to The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error, due process of law and the equal protection of the laws, as required by section 1 of the 14th amendment to the Constitution of the United States, in that said State board of tax commissioners gave notice to The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error, that the hearing of the assessment of its property would be held on the 21st day of August, 1891, and after having given such notice to plaintiff in error fixed a day prior to the 21st day of August, 1891, to wit, the 18th of August, at 7.30 p. m., and invited an attorney representing Marion county to come before it and be heard touching the assessment of plaintiff's property, on the 18th of August, at 7.30 p. m., without any notice whatever to plaintiff in error, and heard arguments and evidence at great
702 length touching said assessment without notice to plaintiff in error and without opportunity to plaintiff in error to correct any misstatements of fact or law made at such hearing on the 18th day of August, and subsequently agreed upon and fixed the assessment of the railroad track and rolling stock of plaintiff in error on the 8th day of September, four days before the end of its term, and did not enter such original assessment of record until the 11th day of September, the last day of its term, and gave to plaintiff in error no notice whatever and no opportunity whatever to file any application or to have any hearing touching the correctness of such original assessment after it was made.

Sixth. The supreme court of Indiana, in its opinion and judgment rendered in this case, erred in holding and adjudging that the State board of tax commissioners did not exceed its jurisdiction in con-

sidering, estimating, and taking into account as elements of value the railroad track and rolling stock of plaintiff in error subject to taxation in Indiana, franchises granted plaintiff by States other than Indiana, and leases, operating contracts, and other contract rights held and owned by plaintiff under charters owned by States other than Indiana, and values of other lines of railroad wholly without the State of Indiana of far greater value and earning capacity than any of plaintiff's lines in the State of Indiana, and in holding and adjudging the act of March 6th, 1891, which permits and in effect requires and in this case has resulted in the assessment for taxation in Indiana of franchises granted to plaintiff in other States, and leases, operating contracts, and other contract rights owned, procured, and held under charters granted by other States, and the value of other lines of railway held by leases and operating contracts and lying wholly within other States and of far greater value than any lines of plaintiff in Indiana, as elements of the taxable value of the railroad track and rolling stock subject to taxation in Indiana, as a valid law and not in conflict with the Constitution of the United States.

703 Seventh. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging the act of the legislature of Indiana approved March 6, 1891, valid and not in conflict with the Constitution of the United States when it permits and in effect requires and has in this case resulted in causing large amounts and values of rolling stock of plaintiff in error which is never used in Indiana or in connection with the traffic and transportation carried on by the plaintiff in error over and upon its lines of railway in or across the State of Indiana, and which is used and operated wholly and solely in other States and is fully taxed in such other States, to be assessed and valued for taxation in Indiana, and in holding and adjudging the law in question valid and not in conflict with the Constitution of the United States when it permits and in effect requires and in plaintiff's case has resulted in the taxation in Indiana of the earnings of plaintiff earned in interstate traffic and transportation carried on by plaintiff in other States than Indiana, in the taxation in Indiana of the instruments, appliances, and facilities owned, used, and operated by plaintiff in error in its interstate traffic and transportation in other States than Indiana.

Eighth. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the State board of tax commissioners, in assessing and valuing the railroad track of plaintiff in error which is situated in Indiana, had the right to estimate that an average mile of plaintiff's railroad track outside of the State of Indiana is of no greater taxable value than an average mile of plaintiff's railroad track within Indiana, and in holding and adjudging that the State board of tax commissioners, acting upon said estimate, had the right in assessing and valuing plaintiff's railroad track in Indiana to consider, estimate, and take into account the entire value of all plaintiff's rail-

704 road track, terminals, and terminal facilities situated in

Illinois and Ohio as adding large increment to the taxable value of that portion of plaintiff's railroad track situated in Indiana and merging and blending and adding such value of railroad track wholly without the State to the value of plaintiff's railroad track wholly within the State of Indiana, thus discriminating against railroads partly in and partly out of the State and in favor of roads wholly in the State, and plaintiff in error avers that such holding and judgment of the supreme court of Indiana was and is especially erroneous and hurtful in this cause from the fact that plaintiff proved and offered to prove that the average value per mile of the line of plaintiff's road from Cincinnati, Ohio, to Cleveland, Ohio, is far greater than the average value per mile of plaintiff's railroad track within Indiana, and that the earning capacity of such line is far greater than the earning capacity of plaintiff's railroad track within Indiana, and that the terminals, terminal property, and terminal facilities owned by plaintiff outside the State of Indiana is of far greater taxable value than terminals, terminal property, and terminal facilities owned by plaintiff within the State of Indiana.

Ninth. The court erred in holding that the Indiana State taxing board, acting by and in virtue of their public position under the State government, in the name of and for the State and clothed with the State's power, in making the valuation of the railroad track of the plaintiff in error and in postponing the original assessment till the 8th day of September, 1891, three days before the close of the term, and withholding such original assessment from the record till the 11th day of September, the last day of its session, and withholding notice of such original assessment from plaintiff in error till the final adjournment of said board, thus depriving plaintiff in error of any opportunity whatever to have any hearing as to the correctness of such original assessment, did not deprive plain-
705 tiff in error of the right to a hearing touching the correctness of such original assessment after it was made, and in holding that such board, acting for the State, granted to plaintiff in error equal protection with other persons as to other classes of property against errors in original assessments, although it postponed the assessment and withheld all record, notice, or information thereof till the session of the board ended, and although there was in fact no opportunity whatever to be heard touching the correctness thereof.

Tenth. The court erred in holding that the act of March 6th, 1891, of the legislature of Indiana, concerning taxation, which limits the session of the Indiana State taxing board to forty (40) days and confers on said board the right to withhold or postpone the original assessment of railroad track till the last day or last hour of its session, and confers no means or opportunity or right by which railroad companies can have a hearing after such original assessment is made touching errors of law or fact or misjudgments in such original assessments, grants to railroad companies equal protection against errors in original assessments with all other persons to whom the right and means and opportunity are granted by said act to secure such hearing as to errors in original assessments of all other property.

Eleventh. The court erred in holding that the act of March 6,

1891, which confers upon the Indiana State taxing board power to prevent any hearing touching the correctness of original assessments of railroad track or rolling stock by postponing the making of such original assessments or withholding the same from record and concealing any knowledge thereof from parties to be affected till the last day of the session of said board (as was done in this case), and thus preventing the parties to be affected from having any opportunity whatever to have a hearing touching the correctness of such original assessments, and which confers on said board power to construe the law without any control or revision and to act
706 upon information or evidence of which the parties to be affected can have no knowledge, and cannot, therefore, refute or explain, and which makes such original assessments of railroad track and rolling stock conclusive and irrevocable, however erroneous or unjust, does not deny due process of law and equal protection of the laws to owners of railroad track and rolling stock.

Twelfth. The court erred in holding that the conduct of the State taxing board, acting for and in behalf of the State, was not a denial to plaintiff in error of due process of law and equal protection of the laws.

Thirteenth. The court erred in holding that the complaint did not directly and specifically charge that the assessment of the railroad track was made fraudulently by said board and with the intention and purpose to impose upon plaintiff in error an unjust and unequal share of the burden of State taxation.

Fourteenth. The court erred in holding that no evidence was admissible under said complaint to show the value of the property assessed or the conduct of the board or the evidence and information before the board.

Fifteenth. The court erred in holding that no evidence was admissible under specification IV*a* of the complaint.

Sixteenth. The court erred in rendering judgment for the defendant in error, when upon the record and evidence the judgment and decision should have been in favor of the plaintiff in error.

Wherefore The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error herein, prays that the holdings, decision, and judgment of the supreme court of Indiana may be reversed.

CLEVELAND, CINCINNATI, CHICAGO &
ST. LOUIS RAILWAY COMPANY,
By JOHN T. DYE, *Attorney.*

707 And come again the parties, by their attorneys, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company filed in this cause, in this court, its petition to modify decision and grant an injunction; which petition is in the words and figures following, to wit:

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, Defendant in Error.

Petition to Modify Decision and Grant Injunction.

Comes now the plaintiff in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, by its attorney, and shows to the court that the decision in this cause involves the following questions, among others, arising under the Constitution of the United States:

First. Whether the act of the legislature of the State of Indiana of March 6, 1891, concerning taxation, which confers upon the Indiana State taxing board power to prevent any hearing touching the correctness of original assessments of railroad track or rolling stock by postponing the making of such original assessments or withholding such assessments from record and concealing any knowledge thereof from parties to be affected until the last day of the term fixed by law, and thus preventing the parties to be affected by such assessments from having any opportunity whatever to have a hearing touching the correctness of such original assessments, and which confers upon said board power to construe the law without any control or revision and power to act upon information or evidence of which the parties to be affected can have no knowledge and which they cannot therefore refute or explain, and which makes such original assessments of railroad track and rolling
708 stock conclusive and irrevocable, however erroneous or unjust, and which grants the right and means and opportunity for a hearing as to errors in original assessments to all persons owning other property, does not deny due process of law and equal protection of laws to railroad companies against errors in original assessments of railroad track and rolling stock, in violation of section 1 of the fourteenth amendment to the Constitution of the United States.

Second. The question whether the Indiana State taxing board acting by and in virtue of their public position under the State government and in the name of and for the State and clothed with the State's power, in making the valuation of railroad track and rolling stock of plaintiff in error and in postponing the original assessment until the 8th day of September, 1891, three days before the close of the term fixed by law, and in withholding such original assessment from the record until the 11th day of September, the last day of its session, and in withholding notice of such original assessment from plaintiff in error until the final adjournment of said board, thus depriving plaintiff in error of any opportunity whatever to have any hearing as to the correctness of such original assessment, did not deprive plaintiff in error of the right to hearing touching the correctness of such original assessment after it was made, and whether such board, acting for the State, granted to plaintiff in error equal protection with other persons as to other classes of property against

errors in original assessments and due process of law, as is required by section 1 of the 14th amendment to the Constitution of the United States.

Third. Whether the act of the legislature of the State of Indiana concerning taxation, approved March 6th, 1891, relating to and providing for the assessment and valuation for taxation of the railroad track and rolling stock of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error herein, and other like corporations, does not deny to said Cleveland, Cincinnati,
709 Chicago & St. Louis Railway Company and other like corporations the equal protection of the laws and due process of law required by section 1 of the 14th amendment to the Constitution of the United States touching the assessment and valuation of the railroad track and rolling stock properly and lawfully subject to taxation in Indiana.

Fourth. Whether the act of March 6, 1891, concerning taxation, which confers upon the Indiana State taxing board power to construe the law without revision or control and to act upon information derived whence and where they will, without notice or knowledge or opportunity to explain or refute the same to the parties to be affected thereby, and to withhold their original assessment until the last day of the term fixed by law for the session of said board, and making the action of said board final, conclusive, and irrevocable, and thus conferring upon said board, when assessing railroad track, first, the power to take into account and blend with their valuation of railroad track in Indiana values which they have no right to consider; and, second, allowing them to lay burdens on interstate commerce by taxing the means and instrumentalities of interstate commerce according to the amount of receipts derived from interstate commerce in the use of such means and instrumentalities in Indiana and in other States; and, third, conferring upon said board power to adopt rules discriminating between different classes of property by considering, in assessing one class, elements omitted in assessing other classes, and by assessing one class at a higher rate in proportion to actual value than other classes; and, fourth, by allowing said board to adopt a rule by which they may consider and take into account, in assessing railroads belonging to systems partly within and partly without the State, the values and earning capacity and stocks and bonds of other railroads wholly without the State, thus discriminating in favor of railroads wholly in the State and against railroads partly within and partly without the State, and providing no method whatever to correct such discrimination or to question the correctness of such original
710 assessment, is not in violation of article 1 of the 14th amendment to the Constitution of the United States.

And the plaintiff in error shows that the determination of these questions is of vital importance to it, and that if the collection of the taxes set forth in the complaint is not stayed or enjoined until the questions arising under the Constitution of the United States can be decided by the Supreme Court of the United States in this case it will inflict irreparable injury upon the plaintiff in error.

And the plaintiff in error shows that it has filed an assignment of errors in this case and an appeal bond and prays that a writ of error may be granted to the Supreme Court of the United States and a citation may be issued to the defendant in error to appear and answer in the Supreme Court of the United States, and it further states that it will at once file the record in this case in the Supreme Court of the United States and will consent and ask an advancement of the case upon the docket of the Supreme Court in order that a speedy decision may be reached.

And plaintiff in error tenders a bond, with M. E. Ingalls, T. P. Haughey, and John T. Dye as sureties, for all damages that may result from an injunction herein.

And it prays further that this court will reconsider its opinion and decision in this case and grant the plaintiff in error an injunction against the defendant, Victor M. Backus, treasurer of Marion county, restraining and enjoining him or his agents from taking any steps whatever to collect the taxes set forth in the complaint until the final decision of this case by the Supreme Court of the United States.

JOHN T. DYE,
For C., C., C. & St. L. R'y Co., Plaintiff in Error.

711 And comes again the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and files its injunction bond; which injunction bond is in the words and figures following, to wit:

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, Defendant in Error.

Whereas the plaintiff in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, sued out a writ of error to the Supreme Court of the United States in the above-entitled cause and has filed a petition in the supreme court of Indiana for an injunction to stay proceedings for the collection of the taxes set forth in the complaint in this case until this case shall be decided by the Supreme Court of the United States:

Now, we undertake and agree that if said injunction shall be granted we will pay to the defendant in error, Victor M. Backus, treasurer of Marion county, Indiana, all damages that he may sustain by reason of such injunction.

Witness our hands and seals this 22rd day of February, A. D. 1893.

[SEAL.] THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By M. E. INGALLS, *Pres.*
(Signed) M. E. INGALLS, *Surety.*
THEO. P. HAUGHEY, *Surety.*
JOHN T. DYE.

Attest: E. F. OSBORN, *Secretary.*

712 And come again the parties, by their attorneys, and the court, having examined said injunction bond and being fully advised in relation thereto, accepts and approves the same.

And come again the parties, by their attorneys, and the court, being fully advised in the premises, orders that the following entry be made in said cause in said court, to wit:

Comes now the plaintiff in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and files an assignment of errors in the above-entitled cause, and prays that a writ of error may be granted to the Supreme Court of the United States, and that a citation may be issued to the defendant in error, Victor M. Backus, treasurer of Marion county, to appear in said court within thirty days, and prays that the defendant in error may be enjoined and restrained from taking any steps to collect the taxes in the complaint set forth under the original assessment by the Indiana State taxing board for the year 1891 against the plaintiff in error until the final determination of this cause in the Supreme Court of the United States.

And the court, being fully advised in the premises, grants such writ of error and issues a citation to defendant in error to appear within thirty days in the Supreme Court of the United States to answer said writ of error.

And the plaintiff in error tenders a bond, with M. E. Ingalls and T. P. Haughey and John T. Dye as sureties, to pay to the defendant in error all damages that may be sustained by reason of the injunction herein, which bond is approved by the court, and it is ordered that defendant in error, Victor M. Backus, treasurer of Marion county, be enjoined and restrained from levying upon the property of the plaintiff in error to collect the taxes extended against the plaintiff

713 in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, under the assessment of the Indiana State taxing board for the year 1891, as set forth in the complaint, and from taking any steps whatever to collect said taxes until thirty days from this date; and if, at the expiration of thirty days from this date, the plaintiff in error shall have filed the transcript of the record in this case in the Supreme Court of the United States, then the defendant in error is enjoined and restrained from levying upon the property of the plaintiff in error to collect the taxes set forth in the complaint in this case, extended upon the duplicate in his hands against the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, under the assessment of 1891 of the Indiana State taxing board, and from taking any steps whatever to collect said taxes until the final determination of this case by the Supreme Court of the United States.

(Signed) S. D. COFFEY, *C. J.*

And be it further remembered that on the 27th day of February, 1893, the same being the 79th judicial day of the November term of the supreme court of Indiana for the year 1892, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company files in this cause in this court its writ of error; which writ of error is attached hereto

and made a part of this transcript, and is in the words and figures following, to wit:

714 UNITED STATES OF AMERICA:

The President of the United States of America to the supreme court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea and an appeal which is in the said supreme court of Indiana, before you, between The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Victor M. Backus, as treasurer of Marion county, Indiana, the validity of the act of the legislature of the State of Indiana, approved March 6, 1891, concerning taxation, is drawn in question and the decision of the said supreme court of Indiana is in favor of the validity of said statute, and because a manifest error hath happened, to the great damage of the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme
715 Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 27th day of February, A. D. 1893.

NOBLE C. BUTLER, *Clerk.*

716 And come again the parties, by their attorneys, and the Cleveland, Cincinnati, Chicago and St. Louis Railway Company files its cost bond in this cause in this court; which cost bond is in the words and figures following, to wit:

Know all men by these presents that we, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, M. E. Ingalls, and T. P. Haughey and John T. Dye, are held and firmly bound unto Victor M. Backus, treasurer of Marion county, Indiana, in the penal sum of two thousand dollars ($2,000) *dollars;* to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of February, A. D. 1893.

The condition of the above obligation is such that—

Whereas on the 19th day of September, A. D. 1892, in the circuit court of Marion county, Indiana, in the case of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company *vs.* Victor M. Backus, treasurer of Marion county, Indiana, judgment was rendered in favor of the defendant, from which an appeal was taken to the supreme court of Indiana; and

Whereas on the 3rd day of February, A. D. 1893, said judgment was affirmed by the supreme court of Indiana and judgment rendered against said Cleveland, Cincinnati, Chicago and St. Louis Railway Company for $— *dollars* — costs, being cause numbered 16769 on the docket of said supreme court of Indiana; and

Whereas the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company has prayed and taken an appeal from the judgment of the supreme court of Indiana to the Supreme Court of the United States:

Now, if the said Cleveland, Cincinnati, Chicago and St.
717 Louis Railway Company shall well and truly prosecute said appeal and abide by and pay the judgment and costs which may be rendered against it, then this obligation to be null and void; otherwise to be and remain in full force and virtue in law.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By M. E. INGALLS, *President.*
M. E. INGALLS, *Surety.*
THEO. P. HAUGHEY, *Surety.*
JOHN T. DYE.

Attest:
[SEAL.] E. F. OSBORN, *Secretary.*

Which bond is endorsed: Approved. S. D. Coffey, C. J.

And be it further remembered that on the 28th day of February, 1893, the same being the 80th judicial day of the November term of the supreme court of Indiana for the year 1892, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company filed its citation to Victor M. Backus, defendant in error; which citation, together with the acknowledgement of service endorsed thereon, is attached hereto and made a part of this transcript and is in the words and figures following, to wit:

718 UNITED STATES OF AMERICA:

To Victor M. Backus, as treasurer of Marion county, Indiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein The Cleveland, Cincinnati, Chicago and St. Louis Rail-

way Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the opinion and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Silas D. Coffey, chief justice of the supreme court of Indiana, this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-three.

SILAS D. COFFEY,
Chief Justice S. C. Ind.

We acknowledge service of the above citation this March 1st, 1893.

SOLOMON CLAYPOOL,
ALONZO GREEN SMITH,
Att'y General of Indiana.
WILLIAM A. KETCHAM,
JOHN W. KERN,
ALBERT J. BEVERIDGE,
Attorneys for Defendant in Error.

719 STATE OF INDIANA, }
Supreme Court. }

I, Andrew M. Sweeney, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete transcript of the record and proceedings had, papers filed (excepting briefs), motions decided, rulings made, opinion delivered, judgment rendered, assignment of errors for United States Supreme Court, application for injunction, injunction bond, injunction order, cost bond, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the United States Supreme Court to the supreme court of Indiana and the original citation to the defendant in error and acknowledgement of service thereof.

Which said transcript, annexed to and hereby returned, together with said original writ of error and original citation, I hereby certify as and for my full return to said writ of error.

Seal Supreme Court, State of Indiana, MDCCCXVI.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 1st day of March, in the year of our Lord one thousand eight hundred and ninety-three.

ANDREW M. SWEENEY,
Clerk Supreme Court.

Endorsed on cover: Case No. 15,281. Indiana supreme court. Term No., 1311. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error, *vs.* Victor M. Backus, as treasurer of Marion county, Indiana. Filed March 23d, 1893.

908

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

154-439

Supreme Court of the United States.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, *Plaintiff in Error*,
vs.
VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, *Defendant in Error*.

No. 15,281.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN T. DYE,
For Plaintiff in Error.

Carlon & Hollenbeck, Printers, Indianapolis.

Supreme Court of the United States.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, *Plaintiff in Error*,
vs.
VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, *Defendant in Error*.
} No. 15,281.

PAGES.

1. *A state, whether acting through its legislative or administrative departments, can not impose taxes or lay burdens on interstate commerce, under the guise of a valuation tax on the means and instruments of interstate commerce, by adopting a different method of making the valuation of such means and instruments from the method used in making the valuation of all other property, by considering and taking into account as "measures of the value" for taxation of such means and instruments, the earnings derived therefrom in such commerce, and the value of property in other states used in such commerce by the owners of such means*

PAGES.

and instruments, while the value of all other property is measured, not by its earnings, nor the amount of property belonging to its owners in other states, but by what it can be sold for in the market 100–123

2. *The act of the legislature of Indiana of March 6, 1891, authorizes the board "in arriving at the basis for the estimate of the value of railroads" used in interstate transportation to consider as a "measure of value" the gross and net earnings thereof derived from interstate commerce, and to consider the capital stock representing property used in interstate commerce wholly without the state of Indiana and having no situs in said state, and to set this value down to stand as the value of railroad track and rolling stock for taxation, while the value of all other property is measured by what it can be sold for in the market, thus prescribing a different rule by which to measure the value of railroad track and rolling stock from that applied to other property, and thereby discriminating against railroad companies and depriving them of the protection of equal laws, and laying burdens on interstate commerce* 100–123

3. *The state of Indiana, acting through its Board of Tax Commissioners, estimated the value of "railroad track" and "rolling stock" for taxation upon the basis of the receipts derived from*

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the use thereof in interstate commerce and upon the basis of the amount of property of plaintiff in error in other states and having no situs in Indiana, used in interstate commerce, and thus, under the guise of a valuation tax, laid burdens upon interstate commerce 100–123

4. *A consolidated railroad company, operating separate and distinct lines of railroad other than its consolidated lines, can not be assessed upon its railroad track and rolling stock in Indiana by considering "the whole system," embracing leased and operated lines in other states, "as a unit," and distributing the value thereof to the lines in Indiana in proportion as the mileage in Indiana bears to the whole mileage, regardless of the value of track and terminals and franchises wholly in other states, upon the conclusive presumption that railroad track and rolling stock are of no greater value per mile without than within the state, while all other property is required to be assessed at its value in the market, without violating the constitutional requirement of equal protection of the laws* 118

5. *The act of the legislature of Indiana of March 6, 1891, which provides for the taxation of all property according to its value, and which denies to railroad companies in the assessment of "railroad track" and "rolling stock"—*

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(1) An opportunity to be heard;

(2) In an orderly proceeding adapted to the nature of the case;

(3) In which they can defend and enforce their rights; and

(4) In which they can prove any fact according to the usages of the common law which would be a protection to their property;

(5) And subjects them to "the play and action of purely personal and arbitrary power" of the board;

(6) And authorizes the board making the assessment to consider, "in arriving at the basis of the estimate" of the average value per mile of "railroad track" and "rolling stock" in Indiana, the value of separate and distinct railroads wholly without the state, operated by the same company, including their franchises and all their property, and the earnings thereof, and the value of the rolling stock used on such roads having no situs in Indiana, and to act on the conclusive presumption that the average value per mile of the railroad track and rolling stock of said separate and distinct lines without the state is no greater than that of roads within the state, subject to assessment by the state board, and thus denies to railroad companies due process of law.... 76–90

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6. *A law of a state, providing for the taxation of all property according to its value, which secures to all persons except railroad companies the right and opportunity to contest the correctness of original assessments after they are made, and before they become final, by a hearing before a tribunal authorized to grant appropriate relief, as a protection against burdens arising from mistakes and inequalities in such assessments, and secures to railroad companies* NO RIGHT OR OPPORTUNITY *to question the correctness of original assessments, denies to railroad companies the equal protection of the laws* 43–75

7. *The state of Indiana, acting through its state board of tax commissioners, can not give notice to railroad companies that the hearing of the assessment of their property will take place on a certain day, and after having given such notice fix a prior day for the hearing of adverse parties touching such assessment, and on such prior day hear such adverse parties, touching such assessment, without any notice whatever to the parties to be affected, and withhold from record their assessment, made after such hearing, and all notice thereof, till their final adjournment, thereby depriving the parties affected of the right to be present at the actual hearing of the original assessment, and of any opportunity to be heard*

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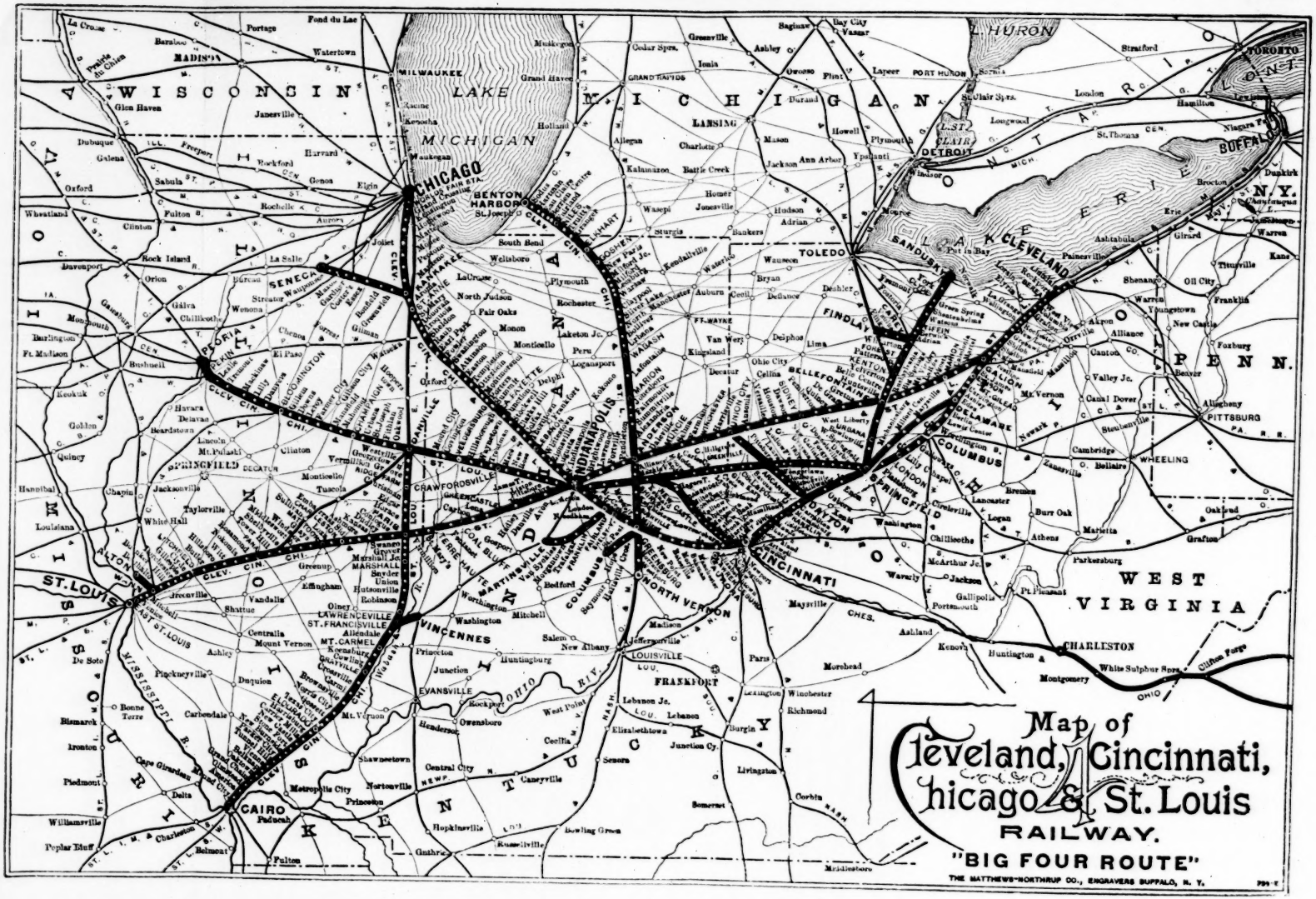
touching errors in said assessment, without a violation of the constitutional requirement of due process of law 91

8. *The state board of tax commissioners, which is only authorized to sit for forty days, can not deny to railroad companies any opportunity to question the original assessment of railroad track and rolling stock by failing to enter of record the assessment thereof and by withholding all notice or knowledge of the original assessment from such companies till the final adjournment of such board, when all other persons are secured the right to question the correctness of original assessments of their property without violating the constitutional requirement of equal protection of the laws* ... 74

9. *"Though the law itself be fair upon its face, and impartial in its appearance, yet if applied and administered by public authority with an evil eye and an unequal hand, so as to practically make an unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution of the United States."* *Yick Wo* v. *Hopkins*, 118 U. S. 373 123



CONSOLIDATED LINES ARE IN RED.

LEASED AND OPERATED LINES ARE IN BLACK.

Supreme Court of the United States.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, *Plaintiff in Error*,
vs.
VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, *Defendant in Error*.
} No. 15,281.

BRIEF FOR PLAINTIFF IN ERROR.

I. STATEMENT OF THE CASE.

This is a suit brought by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company against Victor M. Backus, Treasurer of Marion county, Indiana, defendant in error, to enjoin the collection of taxes assessed against the "railroad track" and "rolling stock" of the plaintiff in error, by the State Board of Tax Commissioners of Indiana, under an act of the general assembly of that state, approved March 6, 1891.

The complaint alleges that the Board of Tax Commissioners of Indiana, by adopting a rule under which "in arriving at the basis of the estimate of value" placed on "railroad track" and "rolling stock," they took into account and considered stocks, bonds and earnings of railroads out of the state, *owned* or

operated by consolidated systems, discriminated against railroad companies operating roads both within and without the state, and in favor of companies operating roads wholly within the state;

That the board embraced and blended in the valuation returned by it values of other property besides "railroad track" and "rolling stock," and which it had no jurisdiction to assess;

That the board embraced and blended in the valuation returned by it values which did not belong or pertain to the roads of plaintiff in Indiana; to wit, values of leased and operated lines and terminals wholly without the state of Indiana, and having no legal connection with the lines assessed by the board in Indiana, except that they were leased and managed by the same company;

That the board estimated the value of rolling stock used in interstate commerce according to the amount of receipts derived from such use in interstate transportation thus laying burdens on interstate commerce; that it applied the same method to "railroad track" used in interstate commerce;

That the board acting for the state denied to plaintiff in error due process of law by giving to it a false and misleading notice of the time of the hearing of its assessment, thus depriving plaintiff of the opportunity of being present at the hearing, and of explaining or rebutting the evidence presented to the board, or even of knowing upon what evidence and rules of law the board acted;

That the board acting in behalf of and by the authority of the state deprived plaintiff in error of the

equal protection of the laws secured to all other persons by the act of March 6, 1891, of having a hearing in which they can question or contest the correctness of the original assessments of property for the purposes of taxation after such original assessment has been made, and before it becomes final and conclusive, by withholding such original assessment from the record and from all knowledge of plaintiff in error till the final adjournment of the board;

That the board in the administration of the law acted with an evil eye and an unequal hand, and discriminated against railroad companies, and in favor of others in similar circumstances, holding property subject to taxation under the same law and according to the same rules, so as to deprive railroad companies of substantial and important rights, and impose burdens upon them to which other classes are not subjected;

That the act of March 6, 1891, violates the Fourteenth Amendment to the Constitution of the United States, because it denies equal protection of the laws to railroad companies in depriving them of the right and opportunity granted to all others to question or contest the correctness of original assessments of their property after such assessments have been made and before they become final and conclusive;

That the said act denies due process of law to railroad companies in that it provides for no notice of a hearing as to the original assessment, or of the time when such original assessment shall be made, and provides for no notice of the time when the correctness of such original assessment can be questioned, and for no opportunity or method by which a hearing can be had touching errors in such original assessment before it becomes final.

The complaint avers that plaintiff in error has fully paid all taxes assessed against the valuation of its property as listed and returned by it, and all taxes assessed against the true cash value thereof, and seeks to enjoin the excess of taxes extended upon the arbitrary, excessive and illegal assessment of the board.

The Supreme Court of Indiana decided (Record, page 455): "The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside except for fraud on the part of the State Board of Tax Commissioners, which would render the assessment void," and "it not being attacked on that ground, no evidence was admissible, for it is a well-settled rule that the courts have no power to give any relief against the erroneus assessments of such boards, except they are given such power by statute, and no such power is given in this state."

The effect of the ruling of the court below was that the taxing board is not bound to examine or inspect the "railroad track" it is required to assess, or to examine any witnesses as to its value, and that it may obtain the information upon which it acts when and where and from what source it pleases, without any notice to or knowledge by the parties interested, or any opportunity by them to cross-examine witnesses adduced against them, or to correct any errors in the evidence to which the board resorts, or to explain it, or refute it with other evidence, or even to know what the evidence is upon which the board acts; that the board has power without examination or evidence, arbitrarily to fix a valuation on "railroad track," and "rolling stock," and withhold all notice of such valuation from the parties interested till its final adjournment, and thus deprive such parties of all opportunity, even to call the attention

of the board to errors it commits; that the board may consider the value of other property than that which it has jurisdiction to assess, in connection with the value of that which it has jurisdiction to assess, and agree upon the value of the whole, and spread the same of record as the assessment of the property which it is authorized to assess; that the board may lay burdens upon interstate commerce by placing a valuation upon the means and instrumentalities of interstate commerce according to the amount and value of the gross earnings or receipts derived from interstate transportation, in the use of such means and instruments; that the board may construe the law, and place such interpretation upon it as it sees fit, and no victim whose property has been taken through an erroneous interpretation can question its action or have it reviewed by the board itself, or appeal therefrom, or question its construction of the law in any tribunal, or ascertain in any proceeding by what rule or construction of the law he has been despoiled of his property.

The plaintiff in error is a corporation organized under the laws of Ohio and Indiana, and operates a system of railroads in the states of Ohio, Indiana, Illinois and Michigan.

On the trial a map was introduced showing the various lines owned and also the lines operated by plaintiff in error. For the sake of clearness, we have printed this map, with the lines *owned* by plaintiff in error colored red, and the lines *operated* through leases and operating contracts colored black.

The consolidated company owns the following lines of railway:

1. A line extending from Cincinnati, Ohio, to Lafayette, Indiana.

2. A line extending from Cleveland, Ohio, to Columbus, Ohio, and from Delaware to Springfield, Ohio.

3. A line extending from Galion, Ohio, to Terre Haute, Indiana.

The consolidated company also operates through leases and operating contracts, the following lines of railroad in Ohio:

1. A line of railroad extending from Columbus, Ohio, to Cincinnati, forming, with the line owned from Columbus to Cleveland, its through line between the latter city and Cincinnati, Ohio.

2. A line extending from Springfield, Ohio, to Sandusky, Ohio.

These lines are wholly in Ohio, and the value of the tracks and rolling stock used on them, and of their terminals, and the amount of their gross earnings, are not taxable in the state of Indiana, and can not legally enter into "the basis of the estimate of the value" of a separate and distinct line owned or operated by this company in Indiana.

It also operates the following lines in Illinois:

1. The Cairo, Vincennes and Chicago, from Danville, Ill., to Cairo, Ill.

2. The road formerly known as the St. Louis, Alton and Terre Haute Railroad, from East St. Louis to Sandford, on the line between Indiana and Illinois.

3. Kankakee and Seneca Railroad from Kankakee to Seneca.

Of course the franchise and track, and terminals and the gross earnings of the lines in Illinois are not taxable in Indiana and can not be estimated as the basis of the assessment for taxation of separate lines in Indiana.

These separate lines in Ohio, Indiana and Illinois are covered by separate mortgages which have been assumed by the consolidated company. It is equally

true that a mortgage resting wholly upon a line in Ohio can not be taken into consideration as the "basis of the estimate of the value" of a separate and distinct line wholly in the state of Indiana.

The stock of the consolidated company represents, of course, all its property in all three states, including its franchises and the bonds and stocks of operated companies, held in its treasury. These stocks and bonds of operated companies, held by the C., C., C. & St. L., in its treasury amount to millions of dollars.

The consolidated company also *operates* the following lines partly in Indiana:

1. The railroad extending from Indianapolis to Pekin, Ill.

2. The railroad extending from Indianapolis to Springfield, Ohio.

3. The Cincinnati, Wabash and Michigan Railway, extending from Rushville, Ind., to Benton Harbor, Mich., and other lines not necessary to be named.

The act of March 6, 1891, provides that the State Board of Tax Commissioners shall have jurisdiction to assess only the property described as "railroad track" and "rolling stock;" and "railroad track" is expressly defined in section 78 of the statute, which provides that the "right of way, including the superstructures, main, side, second track and turn outs, turn-tables, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures which shall be considered personal property) shall be held to be real estate for the purpose of taxation and denominated 'railroad track,' and shall be described in the assessment thereof

as a strip of land extending on each side of said railroad track and embracing the same together with all the stations and improvements thereon, commencing at a point where such track crosses the boundary line in entering the county, township, city or town tending to the point where such track crosses the boundary line leaving such county, township, city or town to the point of termination in the same, as the case may be, containing —— acres more or less (inserting the name of the county, township, city or town, or boundary line of same, and number of acres and length in feet.)''

All other property besides that embraced by the terms ''railroad track'' and ''rolling stock,'' subject to taxation in Indiana, must be assessed by the local assessors. The state board under this act has no authority to assess any property embraced by the general designation ''railroad'' except these two categories, ''railroad track'' and ''rolling stock.'' *Act of March 6, 1891*, sections 81 and 82.

Only four categories of railroad property are subject to taxation in Indiana, to wit:

a. Railroad track,—being the strip of land to be described by metes and bounds, with all improvements thereon—except machinery, stationary engines and fixtures, which is to be assessed as *real estate* by the State Board.

b. Rolling stock, which is to be assessed *as personal property* by the State Board;

c. All real estate not included in the term ''railroad track,'' which is to be assessed by the local assessors;

d. Improvements on right of way not embraced in ''railroad track,'' viz: machinery, stationary engines and fixtures which shall be considered personal property and assessed by the local assessor, and all other personal property. *Act of March 6, 1891*, sections 80, 81, 82, pp. 229–230.

No other kinds of railroad property are subject to taxation in Indiana.

a. The franchise, or privilege of operating the railroad;

b. The good will, or business of the railroad company;

c. The value of leases, contracts, traffic agreements with other corporations;

d. The capital stock, which embraces all its assets;

e. In the case of a consolidated company, the value of franchises in another state, leases and operating contracts with lines in other states, bonds and stocks which the consolidated company holds resting upon lines in other states, terminal properties and contracts with reference thereto in other states, all go to make up the value of the "road." The kinds of property named under this head are not assessable in the state of Indiana, but they are all included under the term "railroad."

The State Board in making the assessment in 1891 under this act made the following certificate:

"Making liberal allowances for all proper deductions, the State Board of Tax Commissioners HAS FIXED THE VALUES OF THE RESPECTIVE RAILROADS and parts of roads within the state of Indiana FOR TAXATION on the first of April, 1891, as hereinbefore set forth. IN ARRIVING AT THE BASIS FOR THE ESTIMATE OF SAID VALUES, THE BOARD HAS CONSIDERED the cost of the construction and equipment of said roads, THE MARKET VALUE OF THE STOCKS AND BONDS, AND THE GROSS AND NET EARNINGS OF EACH OF SAID ROADS, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same;" that is of the respective "railroads." Record, p. 184.

They placed a value "for taxation" not on the "railroad track" and "rolling stock" of plaintiff, but on the respective "railroads and parts of roads within the state of Indiana," thus embracing many elements of value subject to assessment by the local assessors, and also values wholly without their jurisdiction.

"In common and accepted usage, the meaning of the terms railway and railroad has been extended to include not only the permanent way, but everything necessary to its operation as the rolling stock and buildings, including stations, warehouses, roundhouses, locomotive shops, car shops, repair shops, and also all other property of the operating company, *as stocks, bonds and other securities.*" *Century Dictionary*, under head of "Railway," to which "Railroad" refers.

That the board used the term "railroad" in its common and accepted usage, is placed beyond dispute or doubt by its certificate that the board in arriving at THE BASIS OF THE ESTIMATE of value placed upon "ROADS" in Indiana, considered stocks, bonds, gross earnings.

Of course, the amount of stock outstanding of a railroad company throws no light on the market value of its "rolling stock," though it might be properly considered in arriving at the estimate of the value of the "railroad" in the common and accepted usage of the term.

The real market value of a locomotive or a coach could not be estimated on the basis of stocks, bonds or gross earnings, but the value of the "railroad," including all its property, could.

So it would be impossible to arrive at the basis for estimating the value of "railroad track" by considering the value of stock issued by the company, because

the stock represents not only "railroad track" but real estate and personal property subject to assessment by local assessors, the franchises of the company, operating contracts and traffic arrangements, bonds and stocks and securities in its treasury and all its property of every kind within and without the state. The stock represents the "railroad" in the common usage of the term, and its value may very properly be considered "in arriving at the estimate of the value" of the railroad.

This the board certifies that it did. It considered the "stock, bonds and gross and net earnings" in arriving at the estimate of the value of "railroads" in Indiana, and, of course, its returns embraced values other than the values of "rolling stock" and "main track."

The stocks and bonds and gross earnings are considered "*in arriving at the basis for the estimate of the value fixed,*" not upon "railroad track" and "rolling stock," but *upon the roads and parts of roads in Indiana.*

There were, of course, no stocks to consider in the case of the consolidated road of plaintiff except the stocks of the consolidated company, which represented not only the "main track" and "rolling stock" of the consolidated company in Indiana, but all its lines in other states, some of them, as plaintiff offered to prove, of far greater earning capacity than any lines in Indiana, with terminals in Cincinnati, Columbus, Cleveland, more valuable than any in Indiana, and also the stocks and bonds of operated companies held in its treasury amounting to millions of dollars.

These could not properly form any basis of the estimate of the value placed on plaintiff's separate lines of "road" in the state of Indiana, much less could it be taken into account or considered in arriving at the basis of the estimate of the value of its "railroad track"

and "rolling stock" which alone the board had jurisdiction to assess.

In arriving at the basis of the estimate of said values they also considered the bonds of the consolidated company. These bonds, to the extent of millions of dollars, rest upon operated lines wholly without the state, which have been assumed by the consolidated company, but which would afford no evidence of the value of separate and distinct lines in Indiana, whether owned or operated, much less furnish the *basis* for the assessment of those lines. Adopting such a method, the Board of Tax Commissioners, in 1891, placed an assessment upon the main track of plaintiff's roads in the state of Indiana three times the amount at which they were ever assessed in the state of Indiana before and three times as much as the property was returned for taxation, under oath, by the railroad company and greatly in excess of the actual value of its "railroad track" and "rolling stock," and this value the board ordered *should be spread of record and should stand* as the assessment of property denominated "railroad stock," "rolling stock" and "improvements on the right of way." See Record, p. 184.

It is alleged in the complaint that in accordance with the suggestion of F. J. Van Vorhis, attorney for Marion county, employed to procure an increase of the assessment of the roads of plaintiff in error, at a hearing of which the plaintiff in error had no notice, the board adopted a rule or system of valuation of the railroad track and rolling stock of railroad companies owning railroads partly within and partly without the state of Indiana, discriminating against railroad companies owning railroads within and also without the state of Indiana, and in favor of railroad companies owning railroad track and rolling

stock wholly within the state of Indiana; and in violation of a fundamental principle of the constitution, applied said rule to the railroad track and rolling stock of this plaintiff, and to the railroad track and rolling stock of other railroad companies owning railroads partly within and partly without the state of Indiana, by which rule, in arriving at the basis for the estimate of the value of the respective railroads and parts of roads within the state of Indiana, *they considered and took into account the market value of stocks resting upon and representing railroad property, real and personal, wholly without the state of Indiana, and the market value of bonds resting upon and secured by separate and different lines of railroad without the state of Indiana, and which did not rest upon and were not secured by or upon railroad track within the state of Indiana; and by which rule they also considered "in arriving at the basis of the assessment" of lines in Indiana the gross and net earnings of roads and parts of roads without the state of Indiana, owned or operated by railroad companies owning railroad track and rolling stock within the state of Indiana, differing greatly in value and earning capacity from the roads within the state of Indiana owned by such companies,* thereby discriminating against companies operating roads partly within and partly without the state of Indiana and companies operating separate and distinct lines in other states; and in pursuance of such rule said board assessed the railroad track of this plaintiff at a far higher sum than the railroad track and rolling stock of railroad companies owning or operating railroads wholly within the state of Indiana are assessed, in proportion to their true cash value; thus violating a fundamental principle of the constitution requiring a uniform and equal rate of assessment and taxation, and a just valuation of all property for taxation.

By the operation of this rule a discrimination was made in favor of roads lying wholly within the state and not parts of systems having lines in other states, by which roads wholly within the state, of the best physical condition and highest earning capacity, were assessed lower than roads operated by systems partly without the state, of much lower earning capacity and inferior physical condition. The leased and operated lines of plaintiff in error are thus assessed, not according to their physical condition, earning capacity and actual value, but according to the amount of other property owned and operated in Indiana and other states by the consolidated company, although such other lines are some of them wholly distinct and separate from the lines in Indiana, and are of greater value and earning capacity.

Under this Specification IVa, plaintiff attempted to show that the adoption of this system discriminated against roads belonging to systems partly within and partly without the state of Indiana and in favor of roads wholly within the state of Indiana. The court below excluded all evidence offered to show that this rule worked such discrimination, all evidence as to the values of plaintiff's lines, all evidence as to the value of lines of road wholly within this state, refused even to allow proof of the sum at which roads in this state, other than plaintiff's roads, were assessed. The court refused to allow the introduction of any proof of the value of the property assessed. It was held by the court below that under these averments, evidence of the value of property so assessed was inadmissible, and it was argued that it was inadmissible, because in making the assessment "*the board assessed these various lines as one system, considering them in their relation to*

each other and the whole'' (defendant's brief below, page 90).

And not only did the board by the adoption of this rule discriminate against companies owning and operating railroads in Indiana, and also roads in other states, but it is charged in the complaint, that they discriminated against railroads and in favor of real estate, by assessing railroad track at a sum far exceeding its cash value, while they assessed real estate at a sum far below its cash value.

It is also alleged in the complaint that the board ''in arriving at the basis of the estimate of the value of roads and parts of roads'' in Indiana ''took into consideration among other things ''the gross and net earnings of said roads,'' and thus *by assessing, the means and instrumentalities of interstate commerce* ACCORDING TO THE AMOUNT OF RECEIPTS *derived from the use of such means and instrumentalities in interstate transportation laid a tax upon interstate commerce.* While the property used in interstate commerce may be taxed, the amount of the receipts from its use in interstate commerce, can not enter into ''the basis of the estimate of the value'' placed upon it for taxation. If this were so, the states through their legislatures and taxing boards could evade the provision of the national constitution which protects interstate commerce from state burdens and impositions. A locomotive or car used in interstate transportation assessed upon the basis of its earnings, might be taxed double a locomotive or car exactly similar, used wholly in the state, and earning half the amount of the car used in interstate commerce.

The plaintiff in error offered to prove on the trial that seventy-five to eighty per cent. of the gross earnings considered by the board in arriving at the basis of the estimate of value of some of the roads of plaintiff

in error were derived from interstate commerce. But such evidence was excluded, and the ruling of the trial court was affirmed by the Supreme Court, on the ground that "the record of the State Board was conclusive," and could only be set aside on the ground of fraud. (Record, p. 455.)

The effect of the decision of the Supreme Court of Indiana is that under the act of March 6th, 1891, the State Board may assess the means and instrumentalities of interstate commerce not according to their value, but according to the gross or net receipts derived from interstate commerce in the use of such means and instrumentalities, and thus nullify the clause of the constitution which makes interstate commerce as such, free from state burdens and state regulation.

The act itself authorizes, permits and invites the levying of a tax on interstate commerce, under the guise of a valuation tax on the means and instruments of interstate commerce.

The plaintiff in error complains, and the record shows, that board denied to plaintiff in error the right and opportunity of being present at the hearing of the original assessment of its property, by giving to plaintiff in error a false and misleading notice that the hearing as to its property would take place on the 21st day of August, 1891, and after giving such notice, fixing the 18th day of August, 1891, at 7:30 P. M., and inviting an attorney employed to procure an increase of the assessment of the roads of plaintiff in error, to come before them and be heard in the absence of plaintiff in error and without notice to it, touching the value of the roads of plaintiff in error and their assessment. See Record, pp. 185–191.

The plaintiff in error was entitled to some kind of notice of the original assessment of its property, and the giving of a false and misleading notice, and then fixing

a time, and hearing, at great length, evidence and argument as to "the basis of assessment," from parties adverse to plaintiff, prior to the time at which plaintiff was notified to appear, deprived plaintiff of any opportunity to cross-examine the witness, or to rebut his testimony, or confute the argument that "the assessment of roads" in Indiana should be upon the "basis" of the stocks and bonds of the consolidated company, embracing millions of dollars wholly without the state, and upon the basis of earnings derived from interstate commerce, including those upon lines wholly without the state and of far greater earning capacity than any lines in Indiana.

A false and misleading notice that throws a party off his guard and deprives him of his right to a hearing in which he can defend, enforce and protect his rights, is worse than no notice.

And not only did the board, by this false and misleading notice, deprive plaintiff in error of the right and opportunity of being present at the actual hearing of its assessment, and even of knowing the evidence upon which such original assessment was based, or the rules of law according to which it was made, but *the board by withholding from plaintiff all notice of such orginal assessment after it was made, and by failing to spread the same of record till its final adjournment, deprived plaintiff in error of the right and means and opportunity to take any action whatever before said board to correct the errors and inequalities in such original assessment after it was made and before it became final and conclusive.*

This action of the board, acting by and in virtue of their public position under the state government in the name of and for the state and clothed with the state's power, denied to plaintiff in error the equal protection of the laws, secured by this act to all persons except

railroad companies. The board administered this law with an evil eye and an unequal hand so as to practically make an unjust discrimination between persons in similar circumstances material to their rights" and to work "a denial of equal justice within the prohibition of the Constitution of the United States." (*Yick Wo* v. *Hopktns*, 118 U. S. 356.) It was a denial of due process of law and of equal protection of the laws.

And not only did the board administer the law with an evil eye and unequal hand so as to work a denial of equal justice within the prohibition of the Constitution of the United States, but the act of March 6, 1891, is itself a violation of the Constitution of the United States, because it denies to one class the equal protection of the law secured to all other persons against erroneous, unjust and illegal assessments of the value of property upon which taxes are to be laid, in that it secures to all persons but railroad companies the right and opportunity to be heard before some tribunal authorized to correct errors and give appropriate relief, concerning the correctness and legality of original assessments, after the original assessments have been made and before they became final and conclusive, as a protection against the burdens imposed by errors and inequalities in such original assessments, but the act utterly denies to railway companies all protection whatever against the same burdens against which others are protected.

The act expressly grants the right and secures the means and opportunity to all persons to contest the correctness of an original assessment of property for taxation after the same has been made and before it becomes final and conclusive. It provides a tribunal which meets after the original assessment has been made, and after two weeks notice to parties whose rights are affected, for the special purpose of reviewing such original assessments

and hearing complaints as to errors and inequalities therein, and confers on all persons aggrieved a right to a hearing before such tribunal. *Act of March 6th, 1891, section 114.*

But railway companies are assessed by a board, which can only sit for forty days, and which meets, not like the county board of review, to correct errors in original assessments, but to *make original assessments* of railroad track and rolling stock, and authorizes such board to withhold the making of such original assessments until the last hour of the last day of its term, and to withhold the publication or notice of such original assessment till its adjournment, as was done in this case, thereby depriving railroad companies of any right or privilege or opportunity even to petition the board that makes the assessment to correct any errors or inequalities therein. While all other persons are secured the *right* and *opportunity* of a hearing as to inequalities or errors of fact or law in original assessments, before an appropriate tribunal, the *opportunity* to have such hearing by railroad companies depends upon "the purely personal and arbitrary power" of the five men who constitute the State Board. *Act of March 6th, 1891, section 129.*

The act confers no right on railroad companies to a hearing. It secures to them no opportunity of a hearing. It provides for the filing of no petition or complaint for review. They are at the mercy of a board who may sit in secret, and act upon such evidence as they will, and according to such rules of law as please them, and the party whose rights are affected can not even know upon what evidence or what rules of law they act, nor, as in this case, what the assessment is till they have finally adjourned. It is idle to say that railroad companies have the right and opportunity of a hearing by

railroad companies. The board administered this law with an evil eye and an unequal hand so as to practically make an unjust discrimination between persons in similar circumstances material to their rights" and to work "a denial of equal justice within the prohibition of the Constitution of the United States." (*Yick Wo* v. *Hopkins*, 118 U. S. 356.) It was a denial of due process of law and of equal protection of the laws.

And not only did the board administer the law with an evil eye and unequal hand so as to work a denial of equal justice within the prohibition of the Constitution of the United States, but the act of March 6, 1891, is itself a violation of the Constitution of the United States, because it denies to one class the equal protection of the law secured to all other persons against erroneous, unjust and illegal assessments of the value of property upon which taxes are to be laid, in that it secures to all persons but railroad companies the right and opportunity to be heard before some tribunal authorized to correct errors and give appropriate relief, concerning the correctness and legality of original assessments, after the original assessments have been made and before they became final and conclusive, as a protection against the burdens imposed by errors and inequalities in such original assessments, but the act utterly denies to railway companies all protection whatever against the same burdens against which others are protected.

The act expressly grants the right and secures the means and opportunity to all persons to contest the correctness of an original assessment of property for taxation after the same has been made and before it becomes final and conclusive. It provides a tribunal which meets after the original assessment has been made, and after two weeks notice to parties whose rights are affected, for the special purpose of reviewing such original assessments

and hearing complaints as to errors and inequalities therein, and confers on all persons aggrieved a right to a hearing before such tribunal. *Act of March 6th, 1891, section 114.*

But railway companies are assessed by a board, which can only sit for forty days, and which meets, not like the county board of review, to correct errors in original assessments, but to *make original assessments* of railroad track and rolling stock, and authorizes such board to withhold the making of such original assessments until the last hour of the last day of its term, and to withhold the publication or notice of such original assessment till its adjournment, as was done in this case, thereby depriving railroad companies of any right or privilege or opportunity even to petition the board that makes the assessment to correct any errors or inequalities therein. While all other persons are secured the *right* and *opportunity* of a hearing as to inequalities or errors of fact or law in original assessments, before an appropriate tribunal, the *opportunity* to have such hearing by railroad companies depends upon "the purely personal and arbitrary power" of the five men who constitute the State Board. *Act of March 6th, 1891, section 129.*

The act confers no right on railroad companies to a hearing. It secures to them no opportunity of a hearing. It provides for the filing of no petition or complaint for review. They are at the mercy of a board who may sit in secret, and act upon such evidence as they will, and according to such rules of law as please them, and the party whose rights are affected can not even know upon what evidence or what rules of law they act, nor, as in this case, what the assessment is till they have finally adjourned. It is idle to say that railroad companies have the right and opportunity of a hearing by

the board for the correction of errors in an original assessment, which may be made on the last day of its term, or withheld from record or publication till their final adjournment, as was done in this case.

Under this act, if a mistake is made as to the number or value of a flock of sheep, the owner is secured the means of protection against the burden thereby imposed. But if a mistake is made as to the number of miles or value of a railroad, amounting, as in this case, to millions of dollars, the board may withhold the assessment from the knowledge of the parties affected till it finally adjourns, and thus deprive them of any opportunity to be heard touching such mistakes even before the tribunal that made them.

II. The Questions Presented.

The following questions arising under the Constitution of the United States are presented by this record:

I. *The act of March 6, 1891, is a violation of the Fourteenth Amendment of the Constitution of the United States, because it denies to one class the equal protection of the laws secured to all other persons against erroneous, unjust and illegal assessments of the value of property upon which taxes are to be laid, in that it secures to all persons except railway companies the right and opportunity to be heard before some tribunal authorized to correct errors or give appropriate relief concerning the correctness or legality of assessments or inequalities in the same, or mistakes of fact or law, or illegal conduct of those charged with the duty of making the same, after the original assessments have been made, and before they become final and conclusive, as a protection against burdens imposed by such mistakes and errors; but as to railway companies the act utterly denies all protection whatever against the same burdens against*

which others are protected, by conferring on the board power to withhold the original assessment till its final adjournment, and denying any opportunity for a hearing touching its correctness.

II. *The State Board of Tax Commissioners—acting by and in virtue of their public position under the state government, in the name of and for the state, and clothed with the state's power, in making the valuation of property upon which taxes were to be laid—denied to plaintiff in error, equal protection of the laws in that the board withheld from the record and from all knowledge of plaintiff the amount and character of the valuation and assessment of its property till its final adjournment, and thus deprived plaintiff of any opportunity of a hearing to correct errors and inequalities in such original assessment.*

Ex parte Virginia, 100 U. S. 347.

Yick Wo v. *Hopkins*, 118 U. S. 373, and cases cited.

III. *The state of Indiana, acting through its Board of Tax Commissioners, in making an assessment of the property of plaintiff in error, under the act of March 6th, 1891, upon the basis of the receipts derived from interstate transportation laid a tax on interstate commerce, contrary to the Constitution of the United States.*

IV. *The act of March 6, 1891, authorizes, permits and invites the value for taxation of railroads engaged in interstate commerce to be estimated on the basis of the receipts derived from interstate commerce, and the amount of business done in interstate transportation, and thus lays burdens on interstate commerce under the guise of a valuation tax contrary to the Constitution of the United States.*

V. *The State Board of Tax Commissioners, acting in and by virtue of their public position under the state government, in the name of and for the state and clothed with the state's power in making the valuation of the property of plaintiff*

in error upon which taxes were to be laid, denied to plaintiff in error due process of law.

VI. *The State Board of Tax Commissioners, acting by and in virtue of their public position under the state government, in the name of and for the state and clothed with the state's power in making the valuation of the property of plaintiff in error, administered the law with an evil eye and an unequal hand so as to practically make an unjust and illegal discrimination between persons in similar circumstances material to their rights, and to work a denial of justice within the prohibition of the Fourteenth Amendment of the Constitution of the United States.*

VII. *The act of March 6, 1891, does not provide due process of law as to the valuation of railroad track and rolling stock, in that it wholly fails to provide for and require any notice whatever of the time when railroad track and rolling stock will be examined and considered preparatory to an original assessment thereof; or for any notice of the time when the original assessment shall be made; or any notice of the amount of the original assessment when made; and in that it wholly fails to provide for any hearing, or opportunity to be heard, either before the making of the original assessment, or for the purpose of correcting errors and inequalities therein after it has been made, and before it becomes final and conclusive.*

III. The Pleadings.

The complaint alleges that the plaintiff is a corporation organized under the laws of Ohio and Indiana, and is and has been for several years engaged in the business of a common carrier of freight and passengers, and in operating a system of railroads in the states of Ohio, Indiana and Illinois, setting forth the termini and length of the various lines in Indiana.

The complaint sets forth section 77 of the act of the legislature of Indiana requiring corporations owning and operating railroads in said state to file a statement under oath, with the various

county auditors, of the property denominated "*railroad track*," describing each tract of land, other than a city or town lot, through which the road may run, in accordance with the United States surveys, giving the length and width of the strip of land held in each tract, and the number of acres thereof, and the value of the improvements and stations located on the right of way. Section 78 provides that such right of way shall be held to be real estate for the purposes of taxation, and shall be denominated "railroad track," and shall be described in the assessment thereof as a strip of land extending on each side of said railroad track, and embracing the same, together with all the stations and improvements thereon commencing at a point where such track crosses the boundary line in entering the county, township, city or town, tending to the point where such railroad crosses the boundary line leaving such county, township, city or town, to the point of termination in the same, as the case may be, containing ——— acres, more or less, inserting the name of the county, township, city or town, or boundary line of the same, and number of acres and length in feet.

By section 85 such companies are required to return to the auditor of state sworn statements of the property denominated railroad track, and, secondly, of the rolling stock, whether owned or hired, which statements shall be laid before the State Board of Tax Commissioners, "and said board shall assess such property" (Sec. 87). All other property of railroad companies, except "railroad track" and "rolling stock," shall be assessed by the assessor and treated in all respects as property belonging to individuals. (Secs. 82-84.) The only property the State Board is by said act authorized to assess is "railroad track" and "rolling stock."

On the 3d day of August, 1891, Alvin P. Hovey, governor of the state; Claude Matthews, secretary of state; J. O. Henderson, auditor of state, and I. N. Walker and Josiah Gwyn, commissioners appointed by the governor, convened as a board of tax commissioners. The returns made by appellant were laid before them by the auditor of state, of the railroad track and rolling stock of the various lines of railroad owned and operated by plaintiff in Indiana. The separate lines were returned separately, and valuations under oath were placed on each line as required by law. The board increased the values returned by plaintiff, as set forth in the complaint, and included other property which said board had no authority to assess. This increase was in some instances four times and in some instances three times the value returned. The complaint shows that plaintiff has fully paid all taxes assessed against the valuation of its property as listed and returned by appellant, and all taxes assessed against the true cash value

thereof, and seeks an injunction against the taxes extended upon the arbitrary and excessive assessment.

Specification I sets forth that the act of March 6, 1891, denies due process of law to railroad companies in the assessment of railroad track and rolling stock in this, that it denies them:

1. An opportunity to be heard,

2. In an orderly proceeding adapted to the nature of the case,

3. In which they can defend, enforce and protect their rights, and

4. In which they can prove any fact according to the usages of the common law which would be a protection to their property.

Specification II sets forth that the act of March 6, 1891, is a violation of the Fourteenth Amendment of the Constitution of the United States, because it denies to one class the equal protection of the laws granted to all other persons against erroneous, unjust and illegal assessments of the value of property upon which taxes are to be laid, in that it denies to such class the right or privilege to be heard, before any tribunal or body authorized to correct errors or give appropriate relief, concerning the correctness or legality of such assessments, or inequality in the same, or mistakes of fact or law, or illegal conduct of those charged with the duty of making the same, after the original assessments have been made, and before they become final and conclusive.

Specification III sets forth that the board met on the 3d day of August, 1891, and on said day notified plaintiff that the assessment of its property would be heard on the 21st day of August. Afterwards, on the 11th day of August, it fixed a day, to wit, the 18th of August, at 7 P. M., on which it would hear F. J. Van Vorhis, an attorney employed by the commissioners of Marion county to procure an increase of the assessment of railroads in Marion county, including plaintiff's roads in that county, prior to the time at which it had notified plaintiff that the hearing as to its assessment would take place; and said board did hear said Van Vorhis at that time at great length make statements of fact concerning the value of appellant's property, and statements of law as to the legal rules by which said board should be governed in assessing the same without any notice whatever to or knowledge by the plaintiff of such hearing, and after plaintiff had been notified that the hearing touching the value of its property had been fixed for a subsequent day, to wit, the 21st day of August. And plaintiff was thus deprived of the opportunity to cross-examine the witness who testified against it in its absence, or to refute or explain the statements made by such witness, or to hear and answer his arguments touching the value to be fixed upon its property, and the rules of law by which said board should be governed

in assessing the same. Plaintiff had no opportunity even to know what statements had been made affecting its rights. Wherefore it says that the State Board of Tax Commissioners, while acting for and representing the State of Indiana, in the exercise of the judicial function of assessing the value of railroad property, by its action denied to plaintiff the due process of law, and the right to be present and to have the witnesses who testified against it examined under oath, and the right to cross-examine them; thus depriving it of the equal protection of the laws and due process of law, which the Constitution of the United States insures to every person of being present at the hearing of its own case before a tribunal exercising judicial functions, and of having witnesses testifying against it sworn and cross-examined.

Specification IV sets forth:

1. That plaintiff made its returns as required by law, fixing a valuation upon its property; that the board was wholly ignorant and uninformed touching values of railroad track and rolling stock, and, notwithstanding it was their duty to make inquiry and hear evidence before changing or altering the returns made by appellant, it wrongfully and in violation of its duties in the exercise of the judicial functions with which it was charged:

a. Wholly failed to make any examination of the property which they were required by said act to impartially and fairly assess; and

b. Neglected to cause any inspection or examination to be made by any competent persons and reported to them of the character and value of the railroad track and rolling stock which they were required to assess, in order to ascertain the value thereof; and

c. Wholly failed to examine a single witness under oath as to the character and value of the railroad track and rolling stock concerning which it was the duty of said board to make inquiry for the purpose of ascertaining its true value; and

d. Wholly failed to cause to be produced before said board any persons, or books, or papers which were competent evidence to be examined by said board touching the value of said property, and proceeded on the 8th day of September, 1891, being the thirty-sixth day of said session of said board and four days before the end of said session, to appraise and assess the railroad of this plaintiff; and

e. Wholly failed to give this plaintiff any notice of any increase in or addition to the returns filed under oath, as required by law of this plaintiff, and laid before the said board by the auditor of state, until after said four days had expired and until it was too late for this plaintiff to file any complaint touching said assessment, or to ask any hearing touching the increase of the value of

the property as returned by this plaintiff and the additions to said returns as fixed by said board;

And thereby deprived this plaintiff of the right to question or contest the valuation fixed by said board upon its railroad track and rolling stock, and deprived this plaintiff of the right to have any hearing touching the increase of value of its said railroad track and rolling stock as returned by this plaintiff, and deprived this plaintiff of the right to be heard touching the assessment placed by said board upon its railroad track and rolling stock.

And this plaintiff says that the conduct of said board in failing to give to this plaintiff any notice of the action of said board in increasing the assessments of its property and increasing and adding to the values as returned by it, was intentional and done with the purpose to prevent this plaintiff from having an opportunity to question or contest, or to be heard as to, such increase of the value of its property as returned by it, and as to the assessment made by said board, before it should be final and conclusive and irrevocable.

2. The plaintiff further shows that on the 18th day of August, being the 15th day of the session of said board, said board, after having entered at the usual hour an order of adjournment until 10 o'clock of the succeeding day, met after 7 o'clock in the evening in a meeting of said board, which was not open and public, and of which meeting no notice whatever was given to this plaintiff, and of which meeting this plaintiff and no officer of this plaintiff, nor any one representing this plaintiff had any notice or knowledge or information of any kind, and at which meeting no one was present, except said board and its secretary, and F. J. Van Vorhis, who had been employed for the specific purpose of causing the assessment of this plaintiff and of other railroad properties, to be increased as compared with the assessments of former years, by the commissioners of Marion county, of which said board was fully informed, and said board did there invite and permit said F. J. Van Vorhis, with the knowledge that he was so employed in the absence of this plaintiff, to make statements of fact concerning the values of the railroad track and rolling stock of this plaintiff, for the information of said board, and to make statements as to the law, by which they should be governed in making the assessments, and to argue to said board at great length upon assumed statements of fact and law, urging said board to increase the assessment of this plaintiff, and of the various railroads in the state of Indiana, to a sum grossly in excess of the true value of the railroad track and rolling stock, and of the sums at which said property had been assessed in previous years, and did hear the case of this plaintiff, and allowed said Van Vorhis to make statements of fact,

not under oath, and furnish hearsay evidence and argue the case of this plaintiff in a secret meeting, of which this plaintiff had no notice or information whatever.

And this plaintiff further states that in such statements said VanVorhis urged upon said board that they should assess the franchises, as well as the railroad track and rolling stock of said railroad companies, and presented authorities and decisions to said board, in the absence of this plaintiff and without notice to it, to sustain the ground that said board should not limit their assessment to railroad track and rolling stock, but should embrace in their assessment of railroad track the franchises of this company, and made to said board statements as to the average net earnings of the various lines of the plaintiff's road, derived from hearsay, and made erroneous statements as to the amount of capital stock, and as to the market value thereof, and as to the funded debt of said roads, with a view to show the value of such franchises, and urged upon said board that they should assess the railroad track and rolling stock at a sum which would produce at six per cent. the amount of the net earnings as stated by him, and insisted that said road should be assessed upon a six per cent. earning basis and upon the basis of the market value of the stocks and bonds.

This plaintiff shows that many of the statements of fact made by said VanVorhis to said board were incorrect and the statements of law were false. Said VanVorhis was not sworn when he made such statements for the information of the board. This plaintiff had no opportunity to be present or to cross-examine said VanVorhis, and received no notice from said board as to the matters, about which he testified as aforesaid, and made statements, and this plaintiff was, by such action of said board, deprived of the right to be present during the hearing of its own case, as required by due process of law.

3. And afterwards, without having caused any witnesses to be sworn, or having examined any other witnesses besides said Van Vorhis, as to the value of said railroad track and said rolling stock, and without having made any inspection or examination of said rolling stock or said railroad track, and without having made any inquiry upon competent evidence, as it was their duty to do, said board arbitrarily, on the 8th day of September, four days before the completion of its term, pursuing the suggestion made by said VanVorhis in the absence of this plaintiff, made an assessment, not of the railroad track and rolling stock, as the law requires, but of the plaintiff's "railroad," including its franchises, based upon such erroneous information and evidence, heard and taken by them, in the absence of this plaintiff, and without notice, which assessment was based upon "the cost of construction and equip-

ment of said roads, the market value of the stocks and bonds, and the gross and net earnings of said roads," and this without having heard any competent evidence whatever as to the cost of construction or equipment, or as to the market value of its stocks and bonds, or any competent and legal evidence of the gross and net earnings of said roads, other than contained in returns made by plaintiff, and wrongfully and willfully and arbitrarily in violation of the duties imposed upon them, agreed that such assessment of the valuation per mile of the plaintiff's "railroad" (including its franchises), and of the various roads in the state, should be "ordered to be *spread upon the record and should stand* as the assessment of the railroad property, denominated 'railroad track, rolling stock and improvements on right of way for the year 1891,' and reported to the auditor that:

"Making liberal allowances for all proper deductions, the State Board of Tax Commissioners has fixed the values of the various railroads and parts of roads within the state of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

"In arriving at the basis for the estimate of said values, the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto, that would assist the board in arriving at a true cash value of the same."

This plaintiff shows that said assessment was not an assessment of the railroad track and rolling stock, but was an assessment of the plaintiff's *railroad*, and embraced many elements, including franchises and earnings and stocks and bonds, which said board had no legal authority to assess.

And plaintiff shows that said board was required by law to assess said railroad track and rolling stock at its true cash value, as defined by said act, that is, the usual selling price, which could be obtained therefor at private sale, and not at forced or auction sale, and that said board was not authorized to assess other property of said railroad, tangible or intangible; that said assessment so made by said board embraced other property of said road besides railroad track and rolling stock, and purports by the certificate of said taxing board to be an assessment of the "*several railroads* and parts of roads" in the state, and not an assessment of the "railroad track" and "rolling stock," but was "spread upon the record to stand as an assessment of the railroad property, denominated 'railroad track,' rolling stock and improvements on the right of way."

Plaintiff further states that no witnesses were examined as to the true cash value or selling price of said railroad track and roll-

ing stock, and the said board arbitrarily disregarded and rejected the sworn valuations placed upon said property in the returns made by this plaintiff, and without any other evidence under oath, and without examining any other witnesses touching the matter, and without any inspection or examination made by any member of said board of said property, did assess said *railroad* at a value greatly in excess of the true cash value of this plaintiff's railroad track and rolling stock, on the 1st day of April, 1891, and in making said assessment, said state board, for the purpose of increasing the aggregate amount of all assessments in the state of Indiana, without increasing the assessments of the property in said state, in counties, through which plaintiff's road runs, other than railroad property, as the same had been made by township officers for the year 1891, and reported to said board, did assess plaintiff's railroad track at an arbitrary value for taxation, and at a value more than twice as great as the true cash value thereof returned by the plaintiff.

4. Plaintiff further shows that said board was charged with the duty of equalizing the assessment of real estate and railroad property, and that said board was fully advised at the time of making such assessment of said railroad track, that the real estate as assessed by the local assessors in the state of Indiana, was assessed at not more than 80 per cent. of its cash value, and yet with this knowledge they arbitrarily fixed a valuation upon railroad track and rolling stock of a sum more than twice its cash value.

5. Plaintiff shows that in making such assessment, said board in fact made an assessment upon the net earnings of this defendant made in carrying interstate commerce through the states of Ohio, Indiana and Illinois; that while said board agreed that said assessment should stand as an assessment of the main track, side track and rolling stock and improvements on right of way, it was in fact based upon the earnings of this plaintiff made in the business of transportation over its lines in the states of Ohio, Indiana and Illinois in carrying on interstate commerce, and it was agreed "that it should be spread of record to stand as the assessment of 'railroad track' and rolling stock," while in fact no assessment of railroad track was made by said board.

6. Plaintiff states that said assessment was made by said board of the property of this plaintiff as a unit, and that no separate assessment of the various lines as reported to this board was made by it, and that in making such assessment of the property of this plaintiff as a unit, they considered the earnings made by this plaintiff in the states of Illinois and Ohio. And plaintiff shows that no separate account was reported to said board of the earnings of the various lines of said road, nor is such separate account

required to be returned by law; that the railroad track of some of the lines is greatly more valuable than the railroad track of other of its lines, and that it owns and controls valuable lines of railroad in Illinois and in Ohio, with valuable terminals which contribute largely to these earnings, and that in making the assessment of this road and its franchises as said board did, they considered and based their judgment and fixed their valuation upon the earnings of other lines of plaintiff in other states.

Plaintiff further shows that the line of road described as the Chicago Division runs from the state line between Indiana and Ohio into the city of Cincinnati, where it owns terminal properties of very great value, and that the twenty miles of road in Ohio is of very much greater value than any equal number of miles of plaintiff's lines in Indiana. Yet the board assessed the property of this plaintiff as a unit, and in doing so, took into consideration and assessed the property and values in the state of Ohio, and without the jurisdiction of the taxing laws of the state of Indiana, and then arbitrarily distributed the gross value of the property, including the franchises of this plaintiff, over its several lines and agreed that, "it should stand as the assessment of railroad track and rolling stock." And plaintiff further charges that the assessment made by said board was arbitrarily and grossly unjust, and that the valuation fixed upon the property was wholly unreasonable, so much so as to be apparent to all persons of reflection, and to make it impossible to be regarded as the expression of the honest judgment of said board upon the valuation of railroad track and rolling stock.

7. Plaintiff charges that said board did arbitrarily and of mere will, through prejudice and caprice, without having made personal inquiry or examination of the value of said railroad track and rolling stock, without having caused any such examination to be made, without having called before them any person who had knowledge touching the subject or caused any witnesses to be examined under oath, fix the valuation of the plaintiff's railroad track and rolling stock at a sum which is grossly unfair and unjust, with the wrongful intent and for the purpose of casting upon railroads a greater burden of taxation than upon other property of equal value, and that the valuation placed by said board upon plaintiff's railroad track and rolling stock, as above set forth, was not the result of the honest judgment of said board, based upon their own knowledge or upon evidence or inquiry, but such valuation made by said board was made without knowledge or information other than contained in the returns of plaintiff as to the value of said main track and rolling stock and without making any reasonable effort to acquire such knowledge or information, and the action of

said board in increasing the valuations made in the returns and schedules under oath by this plaintiff was willful and arbitrary and made with the fraudulent intent to increase the amount of taxes to be paid by this plaintiff in a much greater proportion than the increase of the amount of taxes to be paid by the owners of property in the state of Indiana other than railroad property.

8. And that said board adopted a rule or system of valuation of railroad track and rolling stock, which was designed by them to operate unequally and to violate a fundamental principle of the constitution, and applied said rule not only to the property of this plaintiff, but to all the railroad corporations of Indiana, by which rule they assessed railroad track and rolling stock, not at its true cash value, but according to the value of its franchises, the amount of the earnings of the owners of said track made from interstate commerce carried on in this and other states, and according to the value of the stock issued by such company and the amount of its bonded debt, and by and in pursuance of such rule assessed said railroad track and rolling stock at a far higher value than its true cash value, and higher than other property in the state of Indiana is assessed for taxation in proportion to its value, thus violating a fundamental principle of the constitution of Indiana, requiring a uniform and equal rate of assessment and taxation, and a just valuation of all property for taxation.

Specification IVa. shows that said board, in making the assessment of railroad property, adopted a rule or system of valuation of the railroad track and rolling stock of railroad companies owning railroads partly within and partly without the state of Indiana, designed by them to operate unequally and to discriminate against railroad companies owning railroad property partly within and partly without the state of Indiana, and in favor of railroad companies owning railroad track and rolling stock wholly within the state of Indiana; and in violation of a fundamental principle of the constitution, applied said rule to the railroad track and rolling stock of this plaintiff, and to the railroad track and rolling stock of other railroad companies owning railroads partly within and partly without the state of Indiana, by which rule, in arriving at the basis for the estimate of the value of the respective railroads and parts of roads within the state of Indiana, they considered and took into account the market value of stocks resting upon and representing railroad property, real and personal, wholly without the state of Indiana, and the market value of bonds resting upon and secured by railroads without the state of Indiana, and which did not rest upon and were not secured by or upon railroad track within the state of Indiana; and by which rule they also considered gross and net earnings of roads and parts of roads

without the state of Indiana, owned by railroad companies owning railroad track and rolling stock within the state of Indiana, differing greatly in value and earning capacity from the roads within the state of Indiana owned by such companies, thereby discriminating against railroads partly within and partly without the state of Indiana; and in pursuance of said rule, said board assessed the railroad track of this plaintiff at a far higher sum than the railroad track and rolling stock of railroad companies owning railroads wholly within the state of Indiana are assessed, in proportion to their true cash value. Thus violating a fundamental principle of the constitution requiring a uniform and equal rate of assessment and taxation, and a just valuation of all property for taxation.

Specification V alleges that, in accordance with the said act of the legislature of the state of Indiana, the plaintiff filed with the auditor of state a duly verified statement of the gross earnings and net earnings of said plaintiff; that a large proportion of said gross earnings and net earnings was the earnings derived from interstate commerce, being commerce between points in the state of Indiana and points in adjoining and other states; that no division was made by said plaintiff in its schedule or statement filed with the said auditor of state, of its earnings, into earnings derived from commerce in the state of Indiana, and earnings derived from interstate commerce, and no such division was called for by said alleged State Board of Tax Commissioners, nor was any such division required by said act of the legislature of Indiana; nor is it possible to make such division between earnings derived from interstate transportation, and transportation wholly within the state of Indiana; said board did not assess nor make any valuation of various lines of railroad track returned by plaintiff as the law requires, but assessed the value of the franchise and business of plaintiff in carrying on interstate commerce by taking the gross earnings of plaintiff made in carrying on interstate commerce as well as commerce in Indiana and out of the state of Indiana on other lines of railroad owned and operated by plaintiff in the states of Ohio and Illinois, deducting therefrom the operating expenses of plaintiff and fixing a sum as the value of said franchise and business of plaintiff as a unit which would produce at six per cent. the net earnings thus arrived at, and distributed such valuation and assessment of the value of the franchise and business of plaintiff as a unit among its various lines in the state of Indiana in proportion to mileage thus taxing the franchise and business of plaintiff in carrying on interstate commerce, and laying burdens on interstate commerce contrary to the Constitution of the United States.

The defendant filed a general denial to the specifications of the complaint.

IV. The Evidence.

The evidence showed that plaintiff in error had paid all taxes assessed against it upon all its property except its "railroad track" and "rolling stock," and that it had paid upon its "railroad track" and "rolling stock" in Marion county, $13,453.59, the amount claimed to be justly due on its returns, and on a fair and just valuation of its property.

The court refused to hear any evidence as to the value of plaintiff's railroad track and rolling stock; or as to the evidence, or information, or rules of law upon which board acted; or as to the value of the stocks and bonds considered by the board in arriving at the basis of the estimate of value of the railroad track and rolling stock of plaintiff; or as to the value or earning capacity of the separate lines of railroad in other states represented by the stock considered by the board; or as to the value of terminals and personal property represented by the stock which they considered "in arriving at the basis of the estimate of the value" of the roads of plaintiff; or as to whether the gross earnings considered by them in arriving at such "basis of the estimate of value" were derived from interstate commerce, or the extent of the gross earnings which were derived from interstate commerce.

The court also refused to hear evidence touching the discrimination between railroad track and other property, and touching the discrimination under the rule adopted by the board in favor of railroads not parts of systems lying partly out of the state, and refused to hear evidence as to the amount of bonds assumed by plaintiff in error, and considered by the board in arriving at the basis of their estimate of values, which rested wholly on roads without the state and upon separate

and distinct lines not part of the consolidation, or of the lines assessed by the board.

The Supreme Court of Indiana affirmed the rulings of the trial court, deciding that: "The State Board having fixed the valuation and assessed the property their action in this behalf is final and can not be avoided or set aside except for fraud."

"No evidence was admissible for it is a well-settled rule that the courts have no power to give relief against erroneous assessments of such boards, except they are given power by statute, and no such power is given in this state." See record, page 455.

This decision gives emphasis to the importance of the protection against mistakes and inequalities by securing the opportunity for a hearing after the original assessment is made, and before it becomes final.

The evidence bearing on the conduct of the board in depriving plaintiff in error of equal protection of the laws, and due process of law will be set forth in the argument of those points.

V. The Decision of the Supreme Court of Indiana.

The opinion will be found in full in the record, pp. 439–459.

It concedes that the act of March 6th, 1891, section 114, *secures the right and opportunity* to all persons whose property has been assessed erroneously, to appear before a board of review and have a hearing touching the correctness of such assessment.

It does not deny that if this act fails to *secure the right and opportunity* to railroad companies to a hearing touching the correctness of original assessments of their "railroad track" and "rolling stock," after such

assessment has been made and before it becomes final and conclusive that it denies to them equal protection of the laws. But the opinion holds that the words in section 129 of said act: "The State Board of Tax Commissioners is hereby given all the powers given to county boards of review" confer upon the State Board, "the *same power* in relation to property and assessments in their jurisdiction" possessed by the county board. Record, page 445.

There is no question about "the power" of the State Board during its session and before its final adjournment to revise or correct its assessment independent of any statutory provision, if it sees fit to do so. That is a matter within the arbitrary and uncontrolled discretion of the State Board. The question we present is not as to "the power" of the State Board, but as to the *right and means and opportunity* secured by this act to railroad companies to have a hearing as to the correctness of assessments after they are made.

It is very clear that the words above quoted secure no right to a hearing to railroad companies; they provide no *means or opportunity* by which any such hearing can be secured. Railroad companies are entirely at the mercy of the State Board. That tribunal may, in its discretion, make its assessment long enough before its final adjournment to afford an opportunity to have any errors corrected, or it may in its arbitrary discretion postpone its action till the last day of its term, or as was done in this case, withhold its assessment from record, and from the parties interested till its final adjournment. Railroads have no right or means or opportunity to have a hearing unless the State Board in the exercise of its arbritrary power graciously concedes such opportunity.

On the other hand, all other persons are secured such

right and opportunity. The county board meets *after the original assessments have been made*, and for express purpose of reviewing and correcting errors in such original assessments, and the statute provides for notice by two weeks' publication to parties interested, and for an appeal from an erroneous decision. (Section 114.)

As to the contention that the State Board adopted a rule discriminating against railroads belonging to systems partly out of the state, and acting in the name of and with the authority of the state denied to railroad companies the equal protection of the law and due process of law, and administered the law with an unequal hand and an evil eye the supreme court says, "*The fact that a wrong was committed in the execution of the law, or that an error was committed and not corrected is no objection to the validity of the law.*" See record, page 444.

On the other hand, it would seem clear that if the interpretation placed by the Supreme Court of Indiana on this statute is correct, that the action of the state through its board of tax commissioners in depriving a large class of the equal protection of the laws would be equally obnoxious to the provisions of the Fourteenth Amendment as if such equal protection had been denied by the state acting through its law-making power. According to this opinion, "if the law itself be fair on its face and impartial in appearance," it may be "applied and administered with an evil eye and an unequal hand, so as to practically make unjust and illegal discriminations, between persons in similar circumstances material to their rights" (*Yick Wo* v. *Hopkins*, 118 U. S. 373) without being within the prohibition of the national constitution; if the law be fair on its face, public officers administering the law in the name of

and by the authority of the state, may deny equal protection of the laws to persons or classes, obnoxious to public odium and prejudice, according to their arbitrary and uncontrolled will.

VI. Assignment of Errors.

The plaintiff in error, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, says that there is manifest error in the judgment and decision of the Supreme Court of Indiana in this case is this:

First. The Supreme Court of Indiana erred in holding and adjudging that the act of the legislature of the state of Indiana concerning taxation, approved March 6, 1891, "is not in conflict with any provision of the constitution, either of the state or the United States."

Second. The Supreme Court of Indiana, in its decision and judgment rendered in this case, erred in holding and adjudging that the sections and provisions of the act of the legislature of the state of Indiana concerning taxation, approved March 6, 1891, relating to and providing for the assessment and valuation for taxation of the railroad track and rolling stock of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, and all other like corporations do provide for and secure to the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company and other like corporations due process of law required by section 1 of the 14th amendment to the Constitution of the United States, touching the assessment and valuation of their railroad track and rolling stock properly and lawfully subject to taxation in Indiana.

Third. The Supreme Court of Indiana, in its opinion and judgment rendered in this case, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana concerning taxation, approved March 6th, 1891, relating to and providing for the assessment and valuation for taxation of the railroad track and rolling stock of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, and other like corporations do not deny to the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company and other like corporations the equal protection of the laws required by section 1 of the Fourteenth Amendment to the Constitution of the United States, touching the assessment and valuation of their railroad

track and rolling stock properly and lawfully subject to taxation in Indiana.

Fourth. The Supreme Court of Indiana, in its opinion and judgment rendered in this case, erred in holding and adjudging that the act of the legislature of the state of Indiana concerning taxation, approved March 6, 1891, did give to plaintiff in error the right and opportunity to be heard for the correction of errors, mistakes and overvalues in the assessment of plaintiff's railroad track and rolling stock after the State Board of Tax Commissioners agreed upon its assessments and valuations thereof before the same were made final, for the following reasons: First. Because said act limits the session of said board to forty days, and does not require said board to make or announce any assessment and valuation of railroad track and rolling stock prior to the last day of its session, or to give to railroad companies any notice whatever of the amount of such original assessment, and does not give to railroad companies any right or opportunity after the making of such original assessments to file any complaint or any petition to correct errors in such original assessments, and does not secure to railroad companies any right or any opportunity to be heard in any proceeding before said board or any other appropriate tribunal for the correction of mistakes and errors and overvalues in such original assessments, thereby enabling said board to prevent the possibility of any hearing for the correction of errors, mistakes or overvalues made by said board in the assessment and valuation of railroad track and rolling stock, and denying the railroad companies any right or opportunity whatever to file any complaint or petition, or have any hearing touching the correctness of such original assessment.

Fifth. The Supreme Court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the state of Indiana, acting through its public officers, the State Board of Tax Commissioners, did not deny to the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error, due process of law and the equal protection of the laws, as required by section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said State Board of Tax Commissioners gave notice to the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error, that the hearing of the assessment of its property would be held on the 21st day of August, 1891, and after having given such notice to plaintiff in error fixed a day prior to the 21st day of August, 1891, to wit, the 18th day of August, at 7:30 P. M., and invited an attorney representing Marion county to come before it and be heard touching the assessment of plaintiff's property on the 18th day of August, at 7:30

P. M., without any notice whatever to plaintiff in error and heard arguments and evidence at great length touching said assessment without notice to plaintiff in error and without opportunity to plaintiff in error to correct any misstatements of fact, or law made at such hearing on the 18th day of August, and subsequently agreed upon and fixed the assessment of the railroad track and rolling stock of plaintiff in error on the 8th day of September, four days before the end of its term, and did not enter such original assessment of record until the 11th day of September, the last day of its term, and gave to plaintiff in error no notice whatever and no opportunity whatever to file any application, or to have any hearing touching the correctness of such original assessment after it was made.

Sixth. The Supreme Court of Indiana, in its opinion and judgment rendered in this case, erred in holding and adjudging that the State Board of Tax Commissioners did not exceed its jurisdiction in considering, estimating and taking into account as elements of value the railroad track and rolling stock of plaintiff in error subject to taxation in Indiana, franchises granted plaintiff by states other than Indiana, and leases, operating contracts, and other contract rights held and owned by plaintiff under charters granted by states other than Indiana, and values of other lines of railroads wholly without the state of Indiana of far greater value and earning capacity than any of plaintiff's lines in the state of Indiana, and in holding and adjudging the act of March 6th, 1891, which permits and in effect requires, and in this case has resulted in the assessment for taxation in Indiana of franchises granted to plaintiff in other states, and leases, operating contracts and other contract rights, owned, procured and held under charters granted by other states, and the value of other lines of railway held by leases and operating contracts, and lying wholly within other states, and of far greater value than any lines of plaintiff in Indiana, as elements of the taxable value of the railroad track and rolling stock subject to taxation in Indiana, as a valid law, and not in conflict with the Constitution of the United States.

Seventh. The Supreme Court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging the act of the legislature of Indiana, approved March 6th, 1891 valid, and not in conflict with the Constitution of the United States, when it permits and in effect requires, and has in this case resulted in causing large amounts and values of rolling stock of plaintiff in error, which is never used in Indiana, or in connection with the traffic and transportation carried on by the plaintiff in error over and upon its lines of railway in or across the state of Indiana, and which is used and operated wholly and solely in other states, and is

fully taxed in such other states, to be assessed and valued for taxation in Indiana, and in holding and adjudging the law in question valid, and not in conflict with the Constitution of the United States, when it permits, and in effect requires, and in the plaintiff's case has resulted, in the taxation in Indiana of the earnings of plaintiff, earned in interstate traffic and transportation carried on by plaintiff in other states than Indiana, in the taxation in Indiana of the instruments, appliances and facilities owned, used and operated by plaintiff in error in its interstate traffic and transportation in other states than Indiana.

Eighth. The Supreme Court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjuding that the State Board of Tax Commissioners, in assessing and valuing the railroad track of plaintiff in error which is situated in Indiana, had the right to estimate that an average mile of plaintiff's railroad track outside of the state of Indiana is of no greater taxable value than an average mile of plaintiff's railroad track within Indiana, and in holding and adjuding that the State Board of Tax Commissioners, acting upon said estimate, had the right, in assessing and valuing plaintiff's railroad track in Indiana, to consider, estimate and take into account the entire value of all of plaintiff's railroad track, terminals and terminal facilities situated in Illinois and Ohio as adding large increment to the taxable value of that portion of the plaintiff's railroad track situated in Indiana and merging, and blending, and adding such value of railroad track wholly without the state to the value of the plaintiff's railroad wholly within the state of Indiana, thus discriminating against railroads partly in and partly out of the state, and in favor of roads wholly in the state; and plaintiff in error avers that such holding and judgment of the Supreme Court of Indiana was and is especially erroneous and hurtful in this cause from the fact that plaintiff proved, and offered to prove, that the average value per mile of the plaintiff's road from Cincinnati, Ohio, to Cleveland, Ohio, is far greater than the average value per mile of plaintiff's railroad track within Indiana, and that the earning capacity of such line is far greater than the earning capacity of plaintiff's railroad track within Indiana, and that the terminals, terminal property and terminal facilities owned by plaintiff outside the state of Indiana are of far greater taxable value than the terminals, terminal facilities and terminal property owned by plaintiff within the state of Indiana.

Ninth. The court erred in holding that the Indiana State Taxing Board, acting by and in virtue of their public position under the state government, in the name of and for the state, and clothed with the state's power, in making the valuation of the railroad

track of the plaintiff in error, and in postponing the original assessment till the 8th day of September, 1891, three days before the close of the term, and withholding such original assessment from the record till the 11th day of September, the last day of its session, and withholding notice of such original assessment from plaintiff in error till the final adjournment of said board, thus depriving plaintiff in error of any opportunity whatever to have any hearing as to the correctness of such original assessment did not deprive plaintiff in error of the right to a hearing touching the correctness of such original assessment after it was made; and in holding that such board, acting for the state, granted to plaintiff in error equal protection with other persons as to other classes of property against errors in original assessments, although it postponed the assessment and withheld all record, notice or information thereof till the session of the board ended, and although there was in fact no opportunity whatever to be heard touching the correctness thereof.

Tenth. The court erred in holding that the act of March 6, 1891, of the legislature of Indiana, concerning taxation, which limits the session of the Indiana State Taxing Board to forty (40) days, and confers on said board the right to withhold or postpone the original assessment of railroad track until the last day or last hour of its session, and confers no means or opportunity or right by which railroad companies can have a hearing after such original assessment is made touching errors of law or fact or misjudgments in such original assessments, grants to railroad companies equal protection against errors in original assessments with all other persons to whom the right and means and opportunity are granted by said act to secure such hearing as to errors in original assessment of all other property.

Eleventh. The court erred in holding that the act of March 6, 1891, which confers upon the Indiana State Taxing Board power to prevent any hearing touching the correctness of original assessments of railroad track or rolling stock by postponing the making of such original assessments or withholding the same from record and concealing any knowledge thereof from parties to be affected till the last day of the session of said board (as was done in this case), and thus preventing the parties to be affected from having any opportunity whatever to have a hearing touching the correctness of such original assessments, and which confers on said board power to construe the law without any control or revision and to act upon information or evidence of which the parties to be affected can have no knowledge, and can not, therefore, refute or explain, and which makes such original assessments of railroad track and rolling stock conclusive and irrevocable, however errone-

ous or unjust, does not deny due process of law and equal protection of the laws to owners of railroad track and rolling stock.

Twelfth. The court erred in holding that the conduct of the state taxing board, acting for and in behalf of the state, was not a denial to plaintiff in error of due process of law and equal protection of the laws.

Thirteenth. The court erred in holding that the complaint did not directly and specifically charge that the assessment of the railroad track was made fraudulently by said board and with the intention and purpose to impose upon plaintiff in error an unjust and unequal share of the burden of state taxation.

Fourteenth. The court erred in holding that no evidence was admissible under said complaint to show the value of the property assessed or the conduct of the board or the evidence and information before the board.

Fifteenth. The court erred in holding that no evidence was admissible under Specification IV*a* of the complaint.

Sixteenth. The court erred in rendering judgment for the defendant in error, when upon the record and evidence the judgment and decision should have been in favor of the plaintiff in error.

Wherefore, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, prays that the holdings, decision, and judgment of the Supreme Court of Indiana may be reversed.

ARGUMENT.

I. *The act of March 6, 1891, is a violation of the Fourteenth Amendment of the Constitution of the United States, because it denies to railroad companies the equal protection of the laws granted to all other persons against erroneous assessments of property upon which taxes are to be laid, in that it denies to them the right or opportunity to be heard before the board making the assessment, or any tribunal authorized to correct errors, or give appropriate relief concerning the correctness or legality of such assessments, after the original assessments have been made and before they become final and conclusive.*

The act of March 6, 1891, provides for the collection of a property tax, and not an excise tax, nor a license tax, nor a tax upon the privilege of carrying on business in the state of Indiana. There is no attempt to classify different kinds of property and subject different classes to different rates of taxation, but it is provided that *one and the same rate of taxation for state purposes shall be levied upon all kinds of property according to its value.* Under this law, one rate being fixed to be laid upon all property according to its value, the amount of taxes to be paid upon property *depends wholly upon its value*, and not upon its use.

The amount of the burdens of the state which any property shall bear, therefore, depends upon the assessment.

The protection afforded by the act against erroneous, unequal or unjust assessments becomes, therefore, of the highest importance—it is absolutely the only means

which the tax-payer has to protect his property from confiscation by the erroneous, arbitrary or unjust action of assessors.

The importance of this protection is recognized in the act, by granting to all citizens the right to protect themselves against mistakes of law or fact or erroneous judgments of assessors charged with the duty of fixing the value of the property upon which taxes are to be laid, by affording to the owners the "opportunity to be heard concerning the legality of the assessment before some tribunal or body authorized to correct errors or give appropriate relief before the property is taken or the charge is made absolute." (114 Ind. 429.) The act affords to the tax-payer "*an opportunity to be heard concerning the correctness of the assessment, and whether the amount charged against him or his property was ascertained and apportioned in good faith and in the manner provided by law*" (114 Ind., 429), after the valuation has been fixed by the persons charged with the duty of making the assessment. The "act affords to every individual affected the opportunity to show that according to the method prescribed by competent authority for making the assessment *the amount charged against him is incorrect*" after the assessment has been made and before it becomes final and irrevocable. The Supreme Court of Indiana, in *Garvin* v. *Dausman*, *supra*, declared this to be an important right. The act secures it to all persons except one class, by appropriate means.

The act provides (1) for the personal inspection of all real estate by the assessor; (2) that the individual affected may *after an assessment has been made* file a complaint before a tribunal authorized to correct errors and have a hearing as to the correctness of the assessment; (3) that an appeal may be taken from the

judgment of such tribunal upon such complaint, to an appellate tribunal to correct any error in the judgment of the original tribunal, thus affording the fullest protection against erroneous, arbitrary and unjust assessments after they have been made, and after such errors have been committed, and before the assessment has become final and conclusive. Act of 1891, section 114.

But as to companies and persons owning and operating railroads in this state, this act denies equal protection against erroneous, unjust and unequal assessments secured to all other citizens. It denies to them the right or privilege to file any complaint "before any tribunal or body" authorized to correct errors, or give appropriate relief, after the assessment has been made. It denies the right to have such complaint heard as to errors in the assessment, after the same have been made, before "any tribunal or body" whatever. Railroad companies are denied the right, or opportunity, or privilege of a hearing as to the correctness or legality of the assessment after it is made and before it becomes conclusive, even before the board that committed the errors or made the unjust assessment.

It will be observed the question we here present is not a question as to due process of law. It is a denial of the equal protection of the laws to deny any class due process of law. The equal protection of the law is a broader term than due process of law. It means not only that every person shall be entitled to due process of law, but that they shall be entitled to the equal protection of the laws, which the Supreme Court says means the protection of equal laws. A statute may be enacted conferring upon one class of citizens remedies, modes of relief against certain wrongs or burdens to which they were not entitled by due process of law, and denying these remedies to another class of citizens.

This denial of statutory relief and protection to one class against the same kind of wrongs and impositions against which all other classes are protected, may not be denial of due process of law, but it is a denial of the equal protection of the laws. We will attempt to show hereafter that the right to have a hearing to correct errors in the assessment of property, is embraced in the term "due process of law;" our contention here is that where this right is granted to one class by statute as a protection against this kind of wrong and imposition, and all protection whatever against the same kind of wrong is utterly denied to another class, this is a denial of the equal protection of the laws. An illustration will make this matter plain.

The Peoria & Eastern Railway Company is a corporation of Illinois. It owns a road extending from Pekin, Ill., to the state line of Indiana. It leases a road extending from the state line of Indiana, to the west bank of White River in Marion county. It owns, leases or operates no other road. The returns made to the State Board of Tax Commissioners by the C. C. C. & St. L. Railway Company, operating its line of road, set forth clearly this road. No returns were made by any person or corporation of any other road as belonging to, leased, controlled or operated by the Peoria & Eastern Railway Company. Mr. Van Voris, in his speech on the night of the 18th of August, as we offered to prove, told this board that the Peoria & EasternRailway Company was a reorganization of the old O. I. & W. Railway Company, which did not terminate at the west bank of White River, but extended to the Ohio line.

The board assessed against the Peoria & Eastern Railway Company, not only its leased line in Indiana from the Illinois line to the west bank of White River, but

also seventy-five miles additional, from the Belt road east of Indianapolis to the Ohio line. This was done in the face of the returns submitted to it and in the absence of evidence except the statements of Van Voris. The amount of this assessment against the Peoria & Eastern Railway Company, is $1,938,897. The average value per mile is $25,893. Some ten miles of road in round numbers $250,000, is assessed against the Peoria & Eastern Railway Company in Marion County, which it does not own or control, or lease or operate, and with which it has no legal connection whatever, and the tax extended on this quarter million dollars at which these ten miles are assessed, is a lien upon the property of the Peoria & Eastern Railroad Company.

Now, if a person is the owner of a flock of sheep, and there is a mistake in the original assessment, the statute protects him against an error of this kind and grants to him a mode of relief; the owner of a farm is protected against any mistakes of this sort; the owners of all kinds of property, however small in value, except the owners of railroad property, are protected against mistakes of this sort. They can file a complaint and have a hearing, and have the mistake corrected in the proper tribunal; the statute provides protection to them as to this kind of burdens and impositions arising from mistakes of law or fact or misjudgments as to value in the making of original assessments; but as to railroads, this statute utterly denies any protection whatever for the same kind of mistakes, errors, and misjudgment against which all others are protected. The act grants statutory protection to all classes against mistakes in original assessments except one class; it denies all statutory relief to that class. They are subjected to burdens and impositions growing out of mistakes and inequalities in original assessments

against which all other persons are protected by statute. They are denied the equal protection of the laws.

This act, which gives statutory relief against these burdens and impositions to all other classes, grants no relief of any kind to railroad companies. There is no tribunal before which they can file a complaint. They can not even file a complaint before the Board that makes the assessment, touching the correctness thereof, unless the board in the exercise of its arbitrary power is gracious enough to make the assessment before the last day of its session, and give notice to the parties interested, and grant a hearing. The statute makes no provision for notice of the assessment, or for a hearing after the assessment is made to correct errors therein. They can not be relieved by the court against any action of the Board except it has exceeded its jurisdiction or its action can be attacked on the ground of fraud. They can be subjected to burdens arising from mistakes of fact or misjudgment of value, or erroneous constructions of law by the Board, and there is absolutely no relief. There is no method or machinery of any kind provided by which they can be relieved from such burdens.

The question is not whether railroad companies are entitled to the precise mode of relief granted to other persons. The objection is that *they are denied any relief;* that they are denied equal protection of the laws. There is no question as to the adequacy or inadequacy of the means provided to protect railroad companies. It is a much plainer case than that. *There are no means provided.* The question is not whether this statute prescribes "a procedure less calculated than other procedure applicable to other owners of property to guard against error." It may be that equal protection might be secured to it by different means of pro-

cedure, but the *act provides no mode of procedure* to protect railroad companies against burdens arising from errors, mistakes, misjudgments or erroneous interpretations of the law by the Taxing Board. If it is urged that the right to file a complaint to correct such errors or a bill of review, or to take an appeal is not secured by due process of law, we are not *under this head* insisting upon due process of law, but upon the equal protection of the laws against burdens and impositions as to which all others living in the same jurisdiction are protected.

If the act provided for a method by which railroad companies could have errors in their assessments corrected, and denied this right to other persons, the objection would be no plainer than it is.

The question is not whether the notice given by statute of the meeting of the Board is sufficient notice to the parties to be affected, to authorize the Board to make an original assessment of their property.

This proposition does not involve the question as to the power of the Board to make the *original* assessment. This proposition assumes the power of the Board to make an *original* assessment of railroad track and rolling stock, and presents the naked question whether a railroad company, against which an original assessment has been made, can be denied by law the same equal protection to correct errors and inequalities, and injustice in such original assessment, that by the act is granted to all other persons.

Neither is it a question of the right to have all property assessed by the same tribunal, but the question is limited to whether the law can grant to all other persons the right to go before *some tribunal* and have a hearing to correct errors and illegalities in original

assessments, and deny to railroad companies the right to go before *any tribunal* to correct error and illegality in an original assessment. Can the legislature grant to all persons, but railroad companies, protection against error and illegality and injustice in original assessments against their property, by giving them a right to file complaints and have a hearing before a tribunal, authorized to correct errors and give appropriate relief, and at the same time deny to railroad companies the same or equal protection, or any protection, against error and illegality and injustice in original assessments against their property, by denyiug to them the right to file complaints or have a hearing before any tribunal authorized to correct errors and give appropriate relief?

It is a question whether the state can deprive one class of the equal protection of the laws—of equal security under the laws granted to all others—against unjust burdens and impositions; whether one class can be exposed without remedy to burdens and impositions from which other classes are protected by appropriate remedies; whether the right to correct mistakes and prevent wrongs in original assessments after they have been made before they become final and absolute by a hearing before appropriate tribunals shall be granted to all other persons, and denied railroad companies.

The fact that the wrong for which others are granted relief in this particular statute is the imposition of unjust burdens through illegal assessments does not affect the question. If the legislature can deny to one class the equal protection granted to all other classes against wrongs growing out of the illegal assessment, they can deny equal protection against all wrongs. That the wrong is done by the unjust or illegal assessment of a taxing board does not authorize the legislature to

grant protection to all classes but one, and deny equal protection to that class. The equal protection granted to one class, the state must grant to all classes and to every class against the same wrongs. The Fourteenth Amendment requiring equal protection to all persons under the laws of the state, extends to and embraces equal protection under the exercise of the taxing power.

Neither is the question affected by the fact that railroad companies constitute the class to which equal protection is denied by this act. If the state can deny equal protection of the laws against a particular form of wrong to railroad companies, they can deny equal protection against this particular form of wrong to any other class of persons, so that the question here presented is one affecting the administration of justice, and may be stated without any reference to railroad companies, or without any reference to assessments: *Can the state deny to one class the equal protection it grants to all other classes against the same form or kind of wrongs? Can the state deny to one class the equal protection and security it grants to all other classes against the same unjust burdens and impositions?* There can be but one answer to this question.

1. *Railroad corporations are persons within the intent of the clause in Section 1 of the Fourteenth Amendment of the Constitution of the United States, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws.*

Mr. Chief Justice Waite said, in *Santa Clara Co.* vs. *Southern Pacific Railroad*, 118 U. S. 396: "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a state to deny to any per-

son within its jurisdiction the equal protection of the laws, applies to these corporations."

See also:

Minn. & St. L. R'y Co. vs. *Beckwith*, 9 Sup. Ct. Rep. 207; 129 U. S. 26.

Mining Co. vs. *Penn.*, 125 U. S. 181–189; 8 Sup. Ct. Rep. 737.

2. *"The Fourteenth Amendment of the Constitution, in declaring that no state shall deny to any person within its jurisdiction the 'equal protection of the laws,' imposes a limitation upon the exercise of all the powers of the state, which can touch the individual or his property, including among them that of taxation."*

"The 'equal protection of the laws' to any one implies not only that he has a right to resort on the same terms with others to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also that he is exempt from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. *This equal protection forbids unequal exactions of any kind, and among them that of unequal taxation.*" *County of San Mateo* v. *S. P. R. R. Co.*, 13 Fed. Rep. 730; 8 A. & E. R. R. Cases, 1.

It was said in *County of Santa Clara* v. *S. P. R.* by Field, J. (1883), 18 Fed. Rep. 409:

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of general legislation, arising from the different conditions of persons, from their means, business or position in life, against which no foresight can guard. But

this is a very different thing, both in purpose and effect, from a carefully devised scheme to produce such inequality; *or a scheme, if not so devised, necessarily producing that result.* Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation, authorizing it, within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position, that unequal taxation is not within the scope of its prohibitory clause, would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation levied against special classes has been the fruitful means of oppressions, and the cause of more commotions and disturbance in society, of revolutions and insurrections, than any other cause in the world. It would, indeed, as counsel in the San Mateo case ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read as contended it does in law: 'Nor shall any state deprive any person of his property without due process of law, except it be in the form of taxation, nor deny to any person within its jurisdiction the equal protection of the laws, except it be by taxation.' No such limitation can be thus engrafted by implication upon the broad and comprehensive language used. The power of oppression by taxation without due process of law is not thus permitted; *nor the power by taxation to deprive any person of the equal protection of the laws.*

"After the adoption of the amendment the Civil Rights Act was re-enacted, declaring that all persons should enjoy the same rights as white citizens, and be subject to like punishments, pains and penalties, and to none other, and adding this clause: '*and subject*

only to like taxes, licenses and exactions of every kind, and to no other.'

"That amendment requires that exactions upon property for the public shall be levied according to some common ratio to its value, so that each owner shall contribute only his just proportion to the general fund. When such exaction is made without reference to a common ratio it is not a tax, whatever else it may be termed; it is rather a forced contribution, amounting in fact to simple confiscation." See also:

Lent v. *Tillson*, 11 Sup. Ct. Rep. 829; 140 U. S. 316.

Minn. & St.L. R'y Co. v. *Beckwith*, 9 Sup. Ct. Rep. 207; 129 U. S. 26.

3. *The constitutional guaranty of equal protection under the laws not only extends to taxation, but embraces the entire process, and includes the assessment and valuation of property, as well as the rate of per cent. charged thereon.*

In *Santa Clara* case, *supra*, it was said: "There is no difference in the rate of taxation prescribed by the law of the state for the property of railroad corporations, and that prescribed for the property of individuals. There is only one rate prescribed for all property. There is, therefore, as in the San Mateo suit, no case presented for the application of the doctrine of classification, either from the peculiar character of railroad property or its use. The ground of complaint is not that any different rate of taxation is adopted—for there is none—but that a different rule is followed in ascertaining the value of railroad corporations as a basis for taxation from that followed in ascertaining the value of property held by natural persons. In estimating the value in one case certain elements are considered, by which the value as a basis

for taxation is lessened; in estimating the value in another case those elements are omitted, by which the valuation is proportionately increased."

It is plain that if the constitutional prohibition did not embrace assessments, it would be nugatory so far as taxation is concerned. The amount of taxes depends on the assessment.

4. "The Fourteenth Amendment means that *no person, or class of persons, shall be denied the same protection of the laws that is enjoyed by other persons or classes in the same place under like circumstances.* *Missouri* v. *Lewis*, 101 U. S., p. 31.

In *Barbier* v. *Connelly*, 113 U. S. 27, the Supreme Court said: "The Fourteenth Amendment undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition; and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying

out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

This language was quoted and reaffirmed in the case of *Yick Wo* v. *Hopkins*, 118 U. S. 367.

In that case the court further said, on page 369:

"The Fourteenth Amendment to the constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any difference of race, of color or of nationality; and *the equal protection of the laws is a pledge of the protection of equal laws*. It is accordingly enacted by section 1977 of the Revised Statutes that 'all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and *shall be subject to like punishment*, pains, penalties, *taxes*, licenses and exactions of every kind, *and to no other*.' The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of strangers and aliens who now invoke the jurisdiction of the court."

As was said by Mr. Edmunds in the *San Mateo* case, and afterwards quoted with approval by Justice Field in the *Santa Clara* case:

"'Equal protection' is the same protection under the

same circumstances; all are to stand alike in like intrinsic conditions. Holding property as property is certainly a like intrinsic condition. In the administration of justice, if the criterion of a right to sue be value, all must have the same right when the same value is concerned; or if the criterion be the nature of the controversy, all must have the same right whose cases are of the same nature. This appears to be too clear for discussion. So, too, in the matter of taxation, if the tax, as in this case, be laid upon the values of property, all persons must stand on the same footing, according to the value of their respective property, as to the proportionate burden they are to bear in respect to the value."

5. *The denial to one class of the right to resort to any tribunal to correct mistakes of law or fact, or of judgment in the assessment of values for taxation, after the original assessment has been made, when such right is by law granted to all other classes, is a denial of the equal protection of the law.*

The privilege to appeal to a court of justice or other tribunal to redress an injury or correct a wrong is an important privilege. It is the means whereby a citizen secures the protection of the law. A statute which grants the right to file complaints against erroneous assessments, and to have them heard by a tribunal appointed for that purpose, and grants the right to appeal from the judgment of such tribunal, and to have a hearing of such appeal, secures to the persons to whom such privileges are granted the protection of the law against unequal and erroneous assessments. Where the constitution is not violated by the action of the Board, and the Board has not been guilty of conduct which is fraudulent in law, the only protection which

the law gives against mistakes of judgment resulting from erroneous findings of fact, or erroneous assumptions of law, or errors of judgment, is by a complaint before a legal tribunal and the hearing of such complaint and the appeal from the decision of such tribunal. And where the statute grants such a right to one class it must grant the same right to all persons and to all classes of persons. If the legislature of South Carolina should pass a law providing that the property of all persons, except black men, should be assessed upon personal inspection, and that the owners of such property should have the right to file complaints before a legal tribunal, have a hearing upon such complaints and a right to appeal from the decisions of such tribunal, and a right to a hearing upon such appeals, and should provide that the property of the black men should be assessed without a personal inspection, and that they should have no right to make complaint against assessments before any tribunal, and no right to appeal from the decision of such tribunal, it would be perfectly clear that black men had been deprived of the equal protection of the law; that they had been deprived of the privilege of resorting to any tribunal for redress against a wrong where the right of resorting to an appropriate tribunal for redress for a similar wrong had been granted to white citizens.

If the legislature may grant to the one class the privilege of resorting to tribunals of appropriate jurisdiction to correct errors, mistakes or inequalities in assessments, while it denies to another class the right to make any complaint or to resort to any tribunal to correct errors, mistakes and inequalities in assessments, then the Fourteenth Amendment to the constitution of the United States, so far as equal protection against unjust taxation is concerned, is a vain and

nugatory thing. It amounts to nothing. Protection of the laws against unjust assessments is secured by resorting to appropriate tribunals. The class which is denied a resort to any tribunals is so far denied the protection of laws.

No distinction can be made between the denial to any class of the right granted to all others to resort to courts of justice for the redress of other injuries, and the denial of the right, granted to all others, to resort to appropriate tribunals to correct mistakes and errors in assessments, where there has been a valuation of property for taxation.

If the legislature can deny to any class the right to complain to any body or tribunal authorized to grant appropriate relief, to correct errors and mistakes in assessment, when this right is granted to all other classes, then it may deny to one class the right to resort to courts of justice upon similar terms and conditions as other classes.

If the law can authorize a tribunal, charged with the judicial function of assessing values, to make an assessment which will result in taxation so high that it will be in the nature of confiscation, without affording to the class whose property is confiscated any right of redress, while the same law affords to other persons, who are not under the ban of prejudice or public odium, the right of redress against erroneous assessments by filing complaints before tribunals authorized to hear such complaints, by providing for a hearing according to due process of law before such tribunals and providing for an appeal from the judgment of such tribunals, then it may deny to one class the right to resort to courts of justice for protection against the same wrongs against which others are granted the right to resort to courts of justice.

If it is urged that the matter of assessing values for taxation stands upon a different basis from the assessment of values in condemnation proceedings, or arbitration proceedings, or before a master in chancery, we answer, so far as the equal protection of the law is concerned in the matter of assessment of values for the purpose of taxation the rule of equal protection must apply to all. One class can not have the opportunity to contest an erroneous valuation before it is final, when this privilege is denied to another class. The importance of this can not be overstated. The power of taxation is the power of confiscation. It is the power by which the majority, who, for the hour, are in possession and control of the state, may levy exactions upon the class which is in the minority, upon the victims of prejudice, or passion, or popular odium. To-day it is the owners of railroads in Indiana whose property is subjected to confiscation at the hands of the majority. To-morrow it will be some other class who, by reason of their occupation, or their color, or their race, or their religion, or the mere fact that they are in the minority, will become the subjects for spoliation.

6. *Citizens can not be classified so as to be denied equal protection of the laws.*

It is not true that "all the protection of law to which a person is entitled is the same protection that is accorded to all others of his class." Such a construction would make short work of the black man in South Carolina, or the Chinaman on the Pacific coast, of breweries and railroads in Indiana, or of any unpopular class. Such a construction nullifies the amendment. You can not classify citizens to despoil them. Every person, to whatever class he belongs, is entitled to the equal protection accorded to all other persons, of whatever class,

against the same wrongs under the same circumstances. As was said in *Walley's Heirs* v. *Kennedy*, 2 Yerger, 554, 24 Am. Dec. 511: "The law of the land means the general public law equally binding on every member of the community. * * * * Every partial law, or private law, which directly proposes to destroy, in effect, individual rights, or does the same by offering remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals or corporations would be governed by one law, the mass of the community, or those who made the law, by another. Whereas a like general law affecting the whole community equally could not have been passed. * * * * The part of the constitution referred to was intended to secure to weak and unpopular individuals equal rights with the majority, who, from the nature of our government, exercise legislative power. Any other construction would set up the majority in the government as a many-headed tyrant with power to oppress the minority at pleasure by odious laws binding upon the latter."

While this language was not used with reference to the Fourteenth Amendment, it states clearly the necessity of the equal protection of law to all classes, and the reasons upon which the Fourteenth Amendment rests.

Does any one believe that "a general law affecting the whole community equally," and depriving all citizens of any right or opportunity to be heard concerning the correctness of an assessment after it had been made, and whether the amount charged against a person or his property "was ascertained and apportioned in good faith and in the manner provided by law" could have been passed?

Under such a law the question of unequal protection

which we now present could not arise. Whether such an act would be unconstitutional because it would deny due process of law, is an entirely different question which we do not discuss under this head.

7. *Neither can you classify property, so that the owners of one class shall be deprived of remedial rights granted to all other citizens.*

The owners of any kind of property subject to assessment for taxation, are entitled to the same equal protection against unjust assessments that are granted to the owners of all other kinds of property against unjust assessments for taxation.

This is a proposition which does not seem to us to admit of dispute or argument.

It does not involve the question whether different kinds of property may not be assessed by different assessors or boards of assessment. The extent of the proposition is that when an assessment has been made, the right to question its correctness "before some body authorized to grant appropriate relief" can not be denied to the owners of one kind of property when the same right is granted to the owners of other kinds of property. You can not deprive one class of protection granted to all other classes for the same wrong.

The question is not whether railroad property shall be assessed by the same tribunals or the same assessors as other property, but whether the right and the opportunity to question the correctness or legality of the assessment after it is made, by whatever tribunal made, before some body authorized to grant appropriate relief, can be denied to one class while it is granted to all others. To state this question is to answer it.

Where a tax is levied upon property according to its assessed value it can not be classified so as to deny to

the owners of one class the right to question the correctness of the assessment in any form before any body authorized to grant appropriate relief, while the right to question the correctness of assessments, made under the same law and for the same purpose, before bodies authorized to grant appropriate relief, is granted to the owners of all other classes of property.

You can not classify property so as to deprive the owners of the equal protection of the law. And that is what this act attempts to do. It is an attempt to nullify the provision of the National constitution, providing that all persons shall be entitled to the equal protection of the laws by denying to a large class *any protection* or *any remedy whatever against unequal and excessive taxation*, while such protection is granted to all other citizens.

In some states, as in Kentucky, in Illinois, in Arkansas, property can be classified so as to subject each class to a special rate of taxation. That is classification for taxation. But when you classify property not to subject classes to a special rate of taxation, but to deprive the owners of some classes of the equal protection against unjust assessments granted to others, you do not classify for taxation, but for confiscation.

This law applies one rate or per cent. to all values, and requires the value of all property to be assessed. There is no classification for taxation here. All property is to be taxed alike according to its value. But in ascertaining and assessing the value the owners of one class are deprived of the equal protection against unjust assessments granted to others. This is classification not as to taxation, but as to legal rights.

It will hardly be contended that a law making deeds for property sold for taxes conclusive evidence that all proper steps had been taken against railroad compa-

nies, and making such deeds only *prima facie* evidence that all proper steps had been taken against other classes, would not be a deprivation of the equal protection of the law.

Illustrations might be multiplied if it was necessary. But further:

8. *In Indiana there can be no classification subjecting property to special rates where a property tax is levied on assessed values.*

The constitution of Indiana allows no classification where a tax is laid upon values, either as to the rate that is laid upon the property, or as to the assessment of the value of the property. It provides (Article X, Section 1), "That the General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property.

The equal rate of taxation required by the constitution of Indiana involves two things: (1) That the assessment shall be equal, and (2) that the rate laid upon the values shall be equal. There is no room here for a special rate upon one man's property which shall not be laid on all men's property for state purposes. There is no room here to place a higher valuation upon one man's property than shall be laid on all men's property. There is no room for classification as to taxation.

If the per cent. to be laid on assessed values must be uniform and equal, so the valuation upon which the per cent. is to be laid must be uniform and equal, or else the rate of taxation is unequal and not uniform. Under a constitution providing for a uniform rate of taxation, property can not be classified so as to assess one property at a higher ratio in proportion to its real

value than other property. When this is done the rate of taxation, or the ratio between the value of the property and the tax levied upon it, ceases to be uniform and equal. In some states, where there is no constitutional prohibition, property may be classified and subjected to special rates of taxation, but this can not be done in Indiana.

The question of the classification of property for taxation has no place in the discussion of the proposition that the state can not deny to one class the equal protection of the laws granted to all other classes. There is no question of poll tax, or license tax, or excise tax, or tax upon business involved in this case. The legislature has attempted to levy no such tax. This act provides for a tax upon property according to its value, and for laying a uniform rate or per cent. upon such property according to its assessed value. In the ascertainment of these values it provides protection against errors, mistakes and inequalities before the assessment becomes final, and denies this protection to one class of its citizens in plain violation of the national law. If the state can do this the will of the whole people, as expressed in the National constitution, can be set aside by "the latest expression of the popular will" in the state legislature acting under the impulse of the hour. By this law one rate is to be laid upon all values. These values are to be assessed and all persons are protected against unjust assessments by proper remedies, except one class, to which no remedy is granted. There is no question of classification involved, except the classification as to legal rights. The only question is whether you can classify citizens so as to deprive one class of the equal protection of the laws granted to all other classes.

Upon the point now under consideration, Mr. Justice Field said:

"The questions thus presented for our determination are of the greatest magnitude and importance. The answers to them concern not merely the railroad corporations of this state, but all corporations other than municipal within the United States. It is of the highest interest to them all to know whether their property is subject to the *same rules of assessment and taxation* to which the property of individuals is subject, *or whether it can be separated and distinguished from that of individuals, and made liable to such different burdens in the way of taxation as the state may choose to impose.* The questions have been argued with great ability and learning by distinguished counsel on both sides, and they have received from the court the most patient and thoughtful examination. Indeed, their examination has been accompanied with a painful anxiety to reach a right conclusion, aware, as the court is, of the opinion prevailing throughout the community that the railroad corporations of the state, by means of their great wealth and the numbers in their employ, have become so powerful as to be disturbing influences in the administration of the laws, an opinion which will be materially strengthened by a decision temporarily relieving any one of them from its just proportion of the public burdens. That consideration, however, can not be allowed to affect the judgment of the court. Whatever acts may be imputed, justly or unjustly, to the corporations, they are entitled, when they enter the tribunals of the nation, to have the same justice meted out to them which is meted out to the humblest citizen. *There can not be one law for them and another law for others.* *San Mateo Case*, 13 Fed. Rep. 730–737; 8 A. & E. R. R. Cases, 8. * * * The whole object of

classifying property is that *each class may be subject to a special rate of taxation*. There is no difference in the rate prescribed by the law of the state for the property of railroad corporations and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, *no case presented for the application of the doctrine of classification*. The discrimination complained of arises from *the different rule adopted in ascertaining the value of the property of railroad corporations as a basis of taxation*, not from any different rate of taxation when the value is established." *Id.* 13 Fed. Rep. 730, 737.

* * * "It is no answer to this discrimination to say that property in the state may be divided into classes and different rates prescribed for them. Undoubtedly property may be classified for purposes of taxation, real property may be subject to one rate of taxation, personal property to another rate. Property in particular districts may be taxed for local purposes, whilst property elsewhere may be exempt. Taxation on business in the form of a license may also vary according to the calling or occupation licensed and the extent of business transacted. But even there, there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation of property that we are concerned in this case, and the whole object of classifying property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the state for the property of railroad corporations and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, no case presented for the application of the doctrine of classification. The discrimination complained of arises from the different

rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value, as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained the law fixes the rate." *San Mateo Case*, 13 Fed. Rep. 730; 8 A. & E. R. R. Cases, 14.

"As justly observed by Mr. Edmunds in the San Mateo case: 'If you once concede the point that you may classify different rates upon the value of things, or that you may put up your values on different principles, as values by deduction or otherwise—which is the same thing stated in another way—then there is no check upon the exercise of arbitrary power. The mob or commune that can get possession of the legislature of the state for one term may despoil every one of the citizens whom it chooses to despoil, and the liberty and security of the constitution of the United States, secured through painful exertion and great consideration, crystallized in unmistakable language—historic indeed, and beneficent as it is historic, securing national intrinsic rights everywhere and to everybody, will turn out to be an utter sham and delusion." *Santa Clara Case*, 18 Fed. Rep. 409; 13 A. & E. R R. Cases, 206.

9. *The question as to unequal protection in denying to a class an opportunity to question the correctness of an assessment after it is made, and before it becomes final and conclusive, can not arise in states where a mode is secured of confirming or contesting the charge imposed in ordinary courts of justice, before it becomes final.*"

The question here presented did not arise in the

Kentucky Railroad Tax Cases, 115 U. S. 321. In that case the court said: "The valuation of railroad property, under the act, and the assessment of the taxes thereon, are not final, in the sense that they constitute a charge upon the property subject to the tax, or a liability upon the corporation owning it. That result can be obtained, and the tax actually collected, only by suit, as provided in the fifth section of the statute, either against the officers of the companies for penalties incurred by a failure to pay the taxes levied, or for the recovery of the taxes themselves, by action in the Franklin Circuit Court, or in the courts having jurisdiction in the counties, for the taxes payable to them respectively. The case is thus brought directly and distinctly within the decision in *Davidson* v. *New Orleans*, 96 U. S. 97, 104, where it was held that, whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden, is imposed upon property for the public use, whether it be of the whole state, or of some more limited portion of the community, and *those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceedings in regard to the property as is appropriate to the nature of the case*, the judgment in such proceedings can not be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. And this is the principle that was followed in *Hagar* v. *Reclamation District*, 111 U. S. 701. In that case the statute of California, which conferred the jurisdiction, authorized *any defense, going either to the validity or to the amount of taxes assessed, to be pleaded*. What inquiries may be permitted in such cases, of course, is a matter that depends upon the particular provisions of the law of the

jurisdiction. In the absence of such provisions, and *as a principle of general jurisprudence, it is safe to say that any defense is admissible which establishes the illegality of the proceeding resulting in the alleged assessment*, whether because it is in violation of the local law, which is relied on as conferring the authority upon which it is based, or because it constitutes a denial of a right secured to the party complaining by the constitution of the United States. *The judgments now under review were rendered in just such actions*, so that we can not escape the conclusion that there is no ground for the plaintiff in error to contend that they have been rendered without due process of law."

Of course, in cases where the law provided "for a mode of confirming or contesting the charge imposed in ordinary courts of justice with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case," no question could arise as to whether the plaintiffs were denied the equal protection of the law. The following cases are decided upon the express ground that there was no denial of the equal protection of the law in the particular herein complained of, because the plaintiffs had a right in the proper tribunal to have a hearing to correct errors, mistakes and inequalities in the assessment, after it had been made. *Davidson* v. *New Orleans*, 96 U. S. 97; *Hagar* v. *Reclamation District*, 111 U. S. 701; *Kentucky State Tax Cases*, 115 U. S. 321. *Lent* v. *Tillson*, 11 Sup. Ct. Rep. 828; 140 U. S. 316 (1891), reviews these cases and confirms the rule laid down therein. See also *Scott* v. *City of Toledo*, 36 Fed. Rep. 385–397.

Our contention here is that this act utterly denies to railroad companies the right to correct errors, mistakes and inequalities in the assessment in any tribunal. Ac-

cording to the construction placed upon this act by the court, the plaintiff had no right to be present when the Board heard the evidence or received the information upon which it acted, had no right to cross-examine witnesses adduced against it, had no right to meet or confute the testimony of such witnesses, to correct or explain any erroneous statements in their testimony, had no right to know what the evidence was upon which the Board acted. The Board could acquire its information when and where it pleased, in session or out of session, by private conversation *with parties employed to raise the assessment*, and could decide according to their own knowledge and judgment, and the plaintiff could not, before the board making the assessment, or before any other tribunal, have a hearing after the assessment "as to the correctness of the assessment made against its property in respect to whether *it was made in good faith, without intervening mistake or error, and according to the method and under the safeguards provided by law.*" (*Garvin* v. *Daussman*, 16 N. E. R. 830, 114 Ind. 429.)

The only answer made to this contention that the act of March 6, 1891, secures no *legal right or opportunity* of a hearing as to the correctness of the original assessment of the railroad track and rolling-stock, is that section 129 of the act provides, "The state board of tax commissioners is hereby given all *the powers* of county boards of review."

a. It is clear that this sentence relates only to the powers conferred on county boards of review to compel the attendance of witnesses, the production of books and papers, to administer oaths, examine parties, and so forth, in the discharge of the duties imposed by the statute of *making the original assessment* of "railroad track" and "rolling-stock," hearing appeals from the

county boards, and equalizing the assessment of real estate.

These are the purposes for which the state board meets. These are the only duties imposed by statute. It can not be contended that the language above quoted enlarges the jurisdiction or extends the duties of the State Board. *A hearing to correct errors in an original assessment* is an entirely different thing from the *making of an original assessment*. The latter is the duty of the State Board, the former is not made the duty of the State Board. The construction of this language insisted on by defendant in error would impose on the State Board all the functions of county boards of review. They would be required to hear complaints touching inequalities of assessments of other property than railroad track and rolling stock in the first instance, and before the complaints were brought before them by appeal.

b. The most that can be claimed is that this language extends the "*powers*" of the State Board. It confers no *rights* on railroad companies by which they can legally compel a hearing. It imposes no *duties* on the State Board to review their assessments. It leaves the matter in the arbitrary discretion of the State Board as to whether they will hear complaints touching the correctness of original assessments, and if they decide to deny a hearing, railroad companies are wholly without any remedy. Their right to a hearing to correct errors depends wholly upon the "purely personal and arbitrary power" of the members of the Board. In other words, they have no such right.

It was said in *Yick Wo* v. *Hopkins*, 118 U. S. 369, "Our institutions of government *do not mean to leave room for the play and action of purely personal and arbitrary power.*"

c. The act requires no notice to be given of the time

or place of such hearing to correct errors in the original assessments of railroad track and rolling stock. The statutory notice of the meeting of the Board for another and different purpose—the making of original assessments—can not be construed to be a notice of the time and place of a different kind of a hearing, for a different purpose—to review errors in assessments, after they have been made. On the other hand, county boards of review meet for the express purpose of "*reviewing assessments* after they have been made," and two weeks' notice is required to be given to all persons interested.

d. In the exercise of their "purely personal and arbitrary power" the Board may postpone the making of the original assessments or withhold notice thereof, as wasdone in this case, so as to deprive railroad companies of all opportunity of a hearing to correct errors.

e. This act provides no means or methods, or place or time or opportunity when such hearing to correct errors can be had.

Railroad companies by this act are placed entirely at the mercy of the State Board, which, according to the Supreme Court of Indiana, may act without examining or inspecting the property which it is required to assess, without examining any witnesses as to its value, upon information obtained when and where and from what source it pleases, without any notice to or knowledge by the party affected, and without any opportunity by them even to know upon what evidence or upon what rules of law the board acts. It may withhold its assessment from the knowledge of the parties affected until its final adjournment.

The assessment, in fact, as the record shows, was only made *four days before the end of the term*, and the record was not completed until *the last day of the term*,

and there was no possibility that the plaintiff should even have notice of the fact that such assessment had been made, unless such notice was given by the board, as a matter of favor, and no such notice was given.

It is perfectly clear then that the plaintiff was deprived by this statute of the right and opportunity "of contesting the charge thus imposed" in any tribunal whatever, while the right of contesting the charge imposed by an original assessment is granted to all other persons.

This proposition stands clear and manifest, free from any kind of confusion.

It does not depend upon the questions to be hereafter argued as to due process of law, or the unequal administration of this law, or as to the taxation of the instruments of interstate commerce upon a value estimated on the basis of the gross earnings derived from the use of such instruments in interstate commerce.

II. *The State Board of Tax Commissioners—acting by and in virtue of their public position under the state government, in the name of and for the state, and clothed with the state's power, in making the valuation of property upon which taxes were to be laid—denied to plaintiff in error equal protection of the laws in that the board withheld from the record and from all knowledge of plaintiff the amount and character of the valuation and assessment of its property till its final adjournment, and thus deprived plaintiff of any opportunity of a hearing or proceeding to correct errors and inequalities in such assessment.*

Ex parte Virginia, 100 U. S. 347.

Yick Wo v. *Hopkins*, 118 U. S. 373, and cases cited.

The state can not deprive any person or class of the equal protection of the laws, whether acting through the legislative or administrative departments of the government.

"Whoever, by virtue of public position under a state government, deprives another of his property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition of the Fourteenth Amendment, and as he acts in the name of and for the state and is clothed with the state's power, his act is the act of the state." *Ex parte, Virginia*, 100 U. S. 347; *Yick Wo* v. *Hopkins*, 118 U. S. 373, and cases cited.

It can not be disputed that plaintiff in error was denied the equal protection secured by this act to all other persons against burdens imposed by erroneous assessments.

The assessment was not made till the third day before final adjournment. Plaintiff in error was not notified of this assessment. It was withheld from the record until the final adjournment of the board.

Plaintiff in error was deprived of the right and opportunity of a hearing touching its correctness.

Even if the act of March 6, 1891, granted to railroad companies the right and opportunity to be heard touching the correctness of original assessments before the State Board, the action of the Board in depriving them of any opportunity to exercise such right is a denial of equal protection, and obnoxious to the prohibition of the Fourteenth Amendment, equally as if the denial had been made by the express words of the statute.

Any other construction leaves it in the power of taxing boards to nullify the provisions of the Fourteenth Amendment, and to confiscate the property of persons and classes under the ban of odium or prejudice.

III. *The act of the General Assembly of Indiana, approved March 6, 1891, denies due process of law to railroad companies in the assessment of "railroad track" and "rolling stock," in this that it denies to them—*

(1) *An opportunity to be heard;*

(2) *In an orderly proceeding adapted to the nature of the case;*

(3) *In which they can defend and enforce their rights, and*

(4) *In which they can prove any fact according to the usages of the common law which would be a protection to their property;*

(5) *And subjects them to "the play and action of purely personal and arbitrary power" of the Board.*

(6) *And authorizes the Board to lay burdens upon railroad companies upon a conclusive presumption that the railroad track operated by them without the State is of no greater value than within the State.*

(*a*) *Due process of law applies to assessments by this Board.*

In *Scott* v. *City of Toledo*, 36 Fed. Rep. 397 (1888), in a well-considered opinion, JACKSON, J., said:

"Nor is it any longer an open question that the provision of the Federal Constitution prohibiting the states from depriving any person of his property 'without due process of law,' applies to taxation by the state or its subordinate agencies, and that in respect to all such taxation based on values and apportionment, and involving judicial or *quasi*-judicial ascertainment as to the amount to be imposed upon the citizen or made a charge on his property, 'due process of

law' demands and requires that at some stage in the proceeding, before the tax or charge is fixed and made final, and collected, he shall have notice and an opportunity to be heard in reference thereto.

"This subject has been so ably and exhaustively discussed and considered in numerous recent decisions of the federal and state courts that little or nothing remains to be added; nor is it deemed necessary to extend this opinion by quoting at length from those authorities which establish the general proposition that it is essential to the validity of state taxation, other than that of personal character, such as licenses for privileges, or the exercise of franchises, that the tax-payer shall, at some stage in the proceedings, have notice or *an opportunity to be heard;* that if such notice is not given, *or opportunity afforded to be heard*, either in levying or collecting the tax, the proceeding will be wanting in that 'due process of law' necessary to give it validity under the Federal Constitution. The legislature may prescribe the kind of notice and the mode in which it shall be given, 'but it can not dispense with all notice.' *The owner must in some form, in some tribunal, or before some official authorized to correct errors or mistakes, have an opportunity afforded him to be heard in respect to the proceeding under which his property is to be taken or burdened, before the tax or assessment becomes final and effectual, in order to constitute such procedure 'due process of law.'* If the tax or assessment can, under the state law, be enforced or collected only by legal proceedings, in which any and all defenses, going either to the validity or the amount of such tax or assessment, may be made, that will afford the opportunity to be heard, and in such cases the proceeding can not be said to deprive the owner of his property 'without due process of law,' however objectionable or unjust it may be otherwise.

In the application of these principles there is no distinction between taxation upon values for general purposes and special assessments based upon benefits. The authorities supporting these propositions are the following: *Kennard* v. *Louisiana*, 92 U. S. 482; *McMillen* v. *Anderson*, 95 U. S. 40–42; *Davidson* v. *New Orleans*, 96 U. S. 104, 105; *Hagar* v. *Reclamation Dist.*, 111 U. S. 707–711, 4 Sup. Ct. Rep. 663; *Kentucky Railroad Tax Cases*, 115 U. S. 335, 336, 6 Sup. Ct. Rep. 57; *Williams* v. *County of Albany*, 122 U. S. 164, 165; 7 Sup. Ct. Rep. 1244; *Spencer* v. *Merchant*, 125 U. S. 354, 355, 358, 361, 8 Sup. Ct. Rep. 921; *Stuart* v. *Palmer*, 74 N. Y. 183; *Railroad Tax Cases*, 13 Fed. Rep. 751–753, 762–766; *County of Santa Clara* v. *Railroad Co.*, 18 Fed. Rep. 410–412, 416–424; Cooley Tax'n, 266; Welty Assessm., Par. 250–253, and cases cited.

"In the cases of *Hagar* v. *Reclamation Dist.*, 111 U. S. 701, 4 Sup. Ct. Rep. 663, and *County of Santa Clara* v. *Railroad Co.*, 18 Fed. Rep. 409, the distinction between a tax or assessment which calls for no inquiry, nor for anything in the nature of judicial examination before levy and collection, and a tax or assessment imposed upon property according to its value or special benefits resulting thereto, to be ascertained by assessors or other officials upon inquiry or evidence, is pointed out and considered with reference to the necessity for notice or opportunity for hearing. In the former class of cases it is suggested that, as notice would be of no service to the individual, and no hearing could change the result, as in taxes for licenses and the exercise of franchises, such notice or an opportunity to be heard may be dispensed with; but that in the latter class of taxes and assessments, based upon values or benefits which involve inquiry, notice or an opportunity for hearing is essential to render the proceeding valid."

6. *The requirements of due process of law.*

In *Dent* v. *West Virginia*, 129 U. S. 114; 9 S. C. R. 234, it is said: "As we have said on more than one occasion, it may be difficult, if not impossible, to give to the terms 'due process of law' a definition which will embrace every permissible exercise of power affecting private rights and exclude such as are forbidden. They come to us from the law of England, from which country our jurisprudence is to a great extent derived; and their requirement was there designed to secure the subject against the arbitrary action of the crown, and place him under the protection of the law. They were deemed to be equivalent to the 'law of the land.' *In this country the requirement is intended to have a similar effect against legislative power, that is, to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty or his property.* Legislation must necessarily vary with the different objects upon which it is designed to operate. It is sufficient for the purpose of this case, to say that legislation is not open to the charge of depriving one of his rights without due process of law, if it be general in its operation upon the subject to which it relates, and is enforceable in the usual modes established in the administration of government with respect to kindred matters, that is, *by process or proceedings adapted to the nature of the case. The great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen.* As said by this court in *Yick Wo* v. *Hopkins*, speaking by MR. JUSTICE MATTHEWS: '*When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that*

they do not mean to leave room for the play and action of purely personal and arbitrary power.'"

In *Hurtado* v. *California*, 110 U. S. 535, the court said: "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as a power. It must be not a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, 'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' 'that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society,' and thus excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, *and other similar special, partial and arbitrary exertions of power under the forms of legislation. Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude.* And the limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers *as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government.*"

In the recent case of the *C. M. & St. P. Ry. Co.* v. *State of Minnesota*, 134 U. S. 418, 10 Supreme

Court Reporter, 466, the question involved was whether it was competent for the railroad and warehouse commission under a statute of Minnesota to make rates that were not merely *prima facie* reasonable and equal, but final and conclusive as to what are equal and reasonable charges. It was held by the Supreme Court of Minnesota that "under the statute the rates published by the commission are the only ones that are lawful, and therefore, in contemplation of law, the only ones that are equal and reasonable; and that, in a proceeding for a mandamus under the statute, there is no fact to traverse except the violation of the law in not complying with the recommendations of the commission." BLATCHFORD, J., delivering the opinion said: "In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the hands of the commission if it chooses to establish rates that are unequal and unreasonable. This being the construction of the statute by which we are bound in considering the present case, we are of the opinion that, so construed, it conflicts with the constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission, which, in view of the powers conceded to it by the state court, can not be regarded as clothed with judicial functions, or possessing the machinery of a court of justice." It is true this is not a case of assessment of values for purposes of taxation. But it is important as the utter-

ance of the Supreme Court as to what is required by due process of law.

It will thus be seen that the requirement of due process of law is "*intended to secure the citizen against any arbitrary deprivation of his rights;*" to leave no "*room for the play and action of purely personal and arbitrary power*" even to "public agents, transcending the limits of their lawful authority when acting in the name and wielding the power of the government"—and to accomplish this it requires, whenever judicial or *quasi*-judicial functions are exercised, that the inquiry shall be conducted, so far as the nature of the case will admit, under the forms and with the machinery provided by wisdom of successive ages for the investigation, judicially, of the truth of a matter in controversy, and shall not be decided by the arbitrary and uncontrolled action of an individual or a board.

1. *The first respect in which this act fails to provide due process of law is that it leaves room for the play and action of the purely personal and arbitrary power of the Board, without restraint or control or revision*—

a. This board is empowered to construe the law without revision and the parties affected by its action can not even know upon what construction of the law the Board acts.

b. The board is governed by no rules except such as it may make under the power with which it is clothed by this act.

c. It may act upon such information as it pleases, derived where and whence it will, or, if it chooses, without information, and the parties aggrieved by its action can not even know upon what evidence it acted.

d. If it commits errors there can be no hearing to correct them unless the board is gracious enough in the exercise of its arbitrary power to grant the privilege.

e. The Board sits for forty days and can make its assessment on the last day of its term, if it so wills, and can withhold all notice thereof from the parties interested till its adjournment and cut off all opportunity of even petitioning the Board to correct its errors.

f. It is not bound to give any notice of the hearing of the original assessment, or of the time when it makes the original assessment.

g. It may, as in this case, give a misleading notice of the time of hearing and then fix another time, prior to the time named in the notice, and hear the case in the absence of the party to be affected without notice to him.

h. And further, as illustrated by this case, under this law as construed by the rulings of the court below, this Board in its assessment of railroad track may consider and take into account values which they have no legal right to consider, wholly without the jurisdiction of the taxing power of Indiana, and thus increase the assessment of railroad track in this state, and their action can not be questioned, and is not subject to revision.

i. Again, under this law as construed by the court below in this case, this Board, in assessing railroad track, may lay burdens upon interstate commerce by placing a valuation upon the means and instrumentali-

ties used in carrying on interstate commerce, according to the amount and value of the gross receipts derived from interstate transportation in the use of such means and instruments, and its action can not be revised or questioned.

j. Again, under the law as laid down by the court in this case, the Board may assess railroad track at four times its cash value "for purposes of taxation," while real estate is assessed at seventy-five per cent. of its cash value, and the action of the Board can not be revised nor questioned.

k. This Board may adopt a rule or system of valuation discriminating in favor of railroads wholly in this state and not operated by companies owning roads in other states, and against railroads operated as parts of a system of railroads in this and other states, by considering stocks and bonds and earnings of the consolidated roads or system, in valuing the railroad track of the latter class of roads, and thereby load up such roads with values that do not inhere in or appertain to the property in this state.

l. Under this law the Board may require railroad companies, operating roads in more than one state, as they have done in this case, to report the gross and net earnings of the entire system, embracing separate and distinct operated roads in this and other states, and may load the value thereof upon railroad track in this state, and yet no question can be raised in any tribunal whether they have construed the law cor-

rectly. No evidence can be introduced in any tribunal showing that the valuation placed by them upon railroad track under such construction is grossly unjust and unequal.

m. The board may, as was done in this case, assess the value of the rolling stock of consolidated companies used upon separate and distinct leased lines, in other states, having no situs in Indiana, and spread the value thereof over lines in Indiana.

We submit that this act denies due process of law because it does not protect railroad companies from the arbitrary deprivation of their rights by the board; from the arbitrary imposition of unjust burdens; and because it leaves free room for the purely personal and arbitrary power of the board without restraint, control or revision. In this connection it is worthy of note that this act provides for a board of five members, of whom *one* shall be the governor and *two* others shall be appointed by him.

2. *The next respect in which this act fails to provide due process of law, is that it authorizes the Board to presume that "the line of railroad track and rolling stock is of no greater value per mile beyond the borders of the state than within the borders of the state"* (See opinion of Supreme Court of Indiana, Record, p. 457), *and makes the decision of the Board, based on such presumption, final and conclusive.*

Wherever burdens are imposed upon a party by a tribunal, exercising judicial functions, upon a conclusive presumption of the existence of a fact of which the court can not take judicial notice, the proceeding is not according to the requirements of due process of law.

The court below held, in construing this act (Record, p. 456): "IT IS EVIDENT NO FAIR OR EQUITABLE VALUE COULD BE PLACED ON A 'RAILROAD TRACK' BY SEVERING IT INTO PARTS EXTENDING from one township or county line to another, or even FROM ONE STATE TO ANOTHER. * * * *A railroad is valuable as a whole, and every section of the line, going to make up the whole, is essential*" (Record, p. 457). "In the *State Railroad Tax Cases*, 92 U. S. 575, the court says: 'This court has expressly held in two cases where the road of a corporation ran through different states, that the tax *upon the income, or franchise*, of the road was properly apportioned by taking the whole income, or value of the franchise, and the length of the road within each state as the basis of taxation.' * * * The court in the case last cited expressly recognizes the legality of an assessment on the rolling stock, valued in accordance with the rule of treating the road as a unit, and taking such a proportion of its value as the length of the road lying within the state bears to the whole road, for, if an appraisement and assessment of a railroad, including in such valuation its rolling stock and franchises, can be assessed, certainly its rolling stock can be assessed separately in the same manner, for values could not be imported in the one method more than the other."

The court in the same case sustain the same method of assessing the railroad track, and say: "It may well be doubted whether any better mode of determining the value has been devised."

The decision in *Western Union Tel. Co.* v. *Massachusetts*, 125 U. S. 130, is in harmony with this theory: "*Presumptively the line of railroad track and rolling stock is of no greater value per mile beyond the borders of the state than within the borders of the state.*" Record, p. 457.

We shall hereafter discuss the method herein provided of assessing the instrumentalities of interstate transportation by a different rule from that by which other property is assessed, and thereby casting burdens on interstate commerce.

The contention here is limited to the proposition that it is a denial of due process of law to authorize any tribunal to lay burdens upon any person upon a conclusive presumption of the existence of facts of which the court can not take judicial notice.

In this case the plaintiff in error offered evidence to show that the value of the railroad track from Cincinnati, Ohio, to Cleveland, Ohio, was greater per mile than the value of any line, or road, in Indiana; that the value of the terminals in Cincinnati, Dayton, Springfield, Columbus and Cleveland far surpass the value of the terminals of its lines, or roads, in Indiana; that the earning capacity of said line far surpass that of any of its line in Indiana. This evidence was excluded, over plaintiff's objection, and the Supreme Court affirms the ruling of the court below. The court said: "The decision of the State Board being final, the record of that Board, required to be kept by the law (section 121 of the act of 1891), is conclusive" (Record, p. 456).

This act authorizes the Board to consider the separate roads of plaintiff in error as a unit, and, in making the assessment, to presume that the railroad track of separate railroads, owned or operated by plaintiff wholly without the state, is of the same value per mile as the railroad track of roads within the state, and makes the action of the board upon such presumption final and conclusive.

3. *It denies a right to a hearing.*

The right to a hearing involves not only the right to be heard, but *to be present when the case is heard;* to have an opportunity to confront witnesses, and have them testify under oath and subject to the right to cross-examine; the right to know what evidence is heard and to introduce other evidence to meet and refute it. Under this act, "the Board may seek information whence they will." They may hear statements and arguments at irregular hours, in the night-time, the witness not being sworn, the parties whose cases are heard having no notice or knowledge of the hearing.

They may resort to sources of evidence, books, publications, statements, of which the parties to be affected have no notice or knowledge, and which they therefore can have no opportunity to meet, explain or refute. The Board is authorized by this law to act upon "information" obtained from what source they will, at what time and place they see fit, and the parties affected have no legal right to know upon what information they act, and there is no method provided under this law by which parties can learn either the rule of law or the "information" upon which the Board acts. The Board is not subject to any control or revision either as to the rules of law by which, or the information upon which, it acts.

The right to a hearing requires that the party shall have an opportunity "to prove any fact according to the constitution and the usages of the common law would be a protection to his property," an opportunity to defend, enforce and protect his rights. If the Board can act upon information derived whence they will of which the party to be affected is not informed, how can such party prove any facts necessary to protect his rights? He can not know what facts are necessary to

be proved. It is idle to talk of due process of law if the Board can act upon its private information derived from what source it may choose, heard out of session, or at an irregular time, upon an interpretation of the act which it alone knows, and subject to no revision. The usages of the common law will allow no such proceeding.

4. *This statute wholly fails to provide any orderly proceeding.*

This board can sit in the night-time. It can obtain information whence it will, from whom it will, and in what manner it pleases and at what times it pleases. It can obtain information first and have a hearing afterwards, as was done in this case; or it can postpone its hearing until the last day of the term and in the meantime seek information. It can hear the party without disclosing the information it has already received, and thus deprive the party of an opportunity to explain or refute or rebut it. It has power to interpret the law, but there is no means by which the party to be affected can find out what that interpretation is. There is nothing in this act to prevent the exercise of arbitrary, uncontrolled power.

5. Railroad companies can not defend or protect their rights before a tribunal that may interpret the law without revision or control, that is, not even required to disclose the rules by which its action is guided; that can procure information whence the members choose, without notice to the parties, without the witnesses being sworn or subject to be cross-examined, and that may hear the case upon rules of law and evidence which the parties have no means of finding out, and which they can not therefore explain or refute.

6. Railroad companies can not prove any fact neces-

sary to the protection of their property without knowing what evidence has been heard which needs to be explained or refuted, without some orderly proceeding adapted to the nature of the case, in which they can have the right to know what evidence is introduced against them, and the opportunity to refute or explain it.

7. *A notice of the time of the sitting of the Board avails nothing unless there is a right to be present at the hearing of the evidence, and to be heard in an orderly proceeding.*

The object of a notice is to give an opportunity for a hearing. A mere notice without any right to be present at the hearing of evidence, or to confront witnesses, or have them testify under oath, or to cross-examine them, or even to know upon what information or evidence the board acts, without the right to question the correctness of the assessment, or the construction of the law under which it is made, does not fulfill the requirements of due process of law. A notice which confers no right to be present at the hearing of the evidence and argument, no right to know upon what information the Board finally and conclusively fixes the value of the property to be assessed, upon evidence heard in the absence of the party, according to the "knowledge and judgment" of the board, would be of no more advantage than the summons of a board of inquisitors to a heretic whose case had been prejudged.

Where the decision of the board of assessment is final and conclusive, the mere fact that the time of its meeting is fixed by statute is not such a notice as is required by due process of law. It is not such notice as gives an opportunity for a hearing. It might as well be said that notice of the beginning of the term of court as fixed

by statute was all that due process of law required to be given to a person who rests under legal obligations.

IV. *The State Board of Tax Commissioners, acting by virtue of their public position under the state government, in the name of and for the state, and clothed with the state's power, in making the valuation of the property of plaintiff in error upon which taxes were to be laid, deprived plaintiff in error of its property without due process of law.* *Ex parte Virginia*, 100 U. S. 347; *Yick Wo* v. *Hopkins*, 118 U. S. 373, and cases cited.

"Of the different kinds of taxes which the state may impose, there is a vast number of which, from their nature, no notice can be given to the tax payer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes, not dependent upon the extent of his business, and generally specific taxes on things, persons and occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. *But where a tax is levied on property, not specifically, but according to its value, to be ascertained by assessors appointed for that purpose, upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially.*" *Hagar* v. *Reclamation District*, 111 U. S. 709. See *County of Santa Clara* v. *Railroad Co.*, 18 Fed. Rep. 409; *Scott* v. *City of Toledo*, 36 Fed. Rep. 397.

Wherever judicial functions are exercised, by which a citizen may be deprived of his property, they must be exercised according to due process of law.

In *Stuart* v. *Palmer*, 74 N. Y. 188, Earl, Justice, said:

"No case, it is believed, can be found in which it

was decided that this constitutional guaranty (due process of law) did not extend to assessments.

"Due process of law requires that a party interested shall have, by law, an opportunity to be heard, and *to defend*, and *enforce and protect his rights* in an orderly proceeding adapted to the nature of the case."

The III specification of the complaint sets up that the Board of Tax Commissioners, after having made and entered on their record an order that they would begin the hearing of the assessments of railroad companies on the 20th day of August, 1891, at 9 o'clock A. M., and after having served formal written notice on plaintiff that the hearing of the assessment of its properties would take place on the 21st of August, 1891, invited and permitted F. J. VanVorhis, employed by the commissioners of Marion county to procure an increase of the assessment of the various railroads in Marion county, including several lines of plaintiff's road, to come before them on the evening of August 18th, for the purpose of being heard as to the increase of such assessment, and that he was heard by such board at great length touching the value at which plaintiff's property should be assessed, making statements of fact, and statements as to the legal rule by which such assessment should be made, in the absence of plaintiff, and without any notice whatever to plaintiff, thus depriving plaintiff of the opportunity to confront the witness, or cross-examine him, or have him sworn, or to contradict or explain his testimony by other evidence, or to refute his arguments, or to know even what facts had been testified to, or arguments or appeals made on the hearing of appellant's case in its absence.

The evidence shows that on the 3d day of August, 1891, being the first day of the session of the board,

the following order was made: "On motion of Mr. Henderson, the secretary was directed to notify the railroad companies and corporations that they will be heard on a certain date, and that the secretary designate the number to be heard each day." "On motion of Mr. Walker, it was agreed to begin the hearing of railroad companies and corporations on Thursday, August 20, 1891, at 9 o'clock, A. M." Tp. 169. The secretary, Joseph T. Fanning, thereupon served notice upon the C. C. C. & St. L. R'y Company to appear before the state board after the 20th day of August, 1891. Tp. 185. He testified:

Q. I ask you if you recollect by refreshing your memory whether the 21st of August is the date which you inserted in that notice?

A. I do not recollect the date, but I take it from the record it is.

After having thus notified the C. C. C. & St. L. R'y Company that the hearing as to the value of its property would take place after the 20th of August and on the 21st of August, on the 11th day of August the following order was made: "The Board fixed Tuesday evening, 7 o'clock P. M., for hearing Mr. VanVorhis, *one of the attorneys of Marion county, on the subject of railroad assessments.*"

This court will take judicial notice of the fact that the following lines of the C. C. C. & St. L. R'y Company run through Marion county: the line from Indianapolis to St. Louis; the line from Indianapolis to Chicago; the line from Indianapolis to Cleveland, and the line from Indianapolis to Cincinnati.

No notice was given to the C. C. C. & St. L. R'y Company of the hearing of Mr. VanVorhis, the time of which was fixed after plaintiff had been notified to come at another and later day.

The record of the proceedings of the board on the 18th of August, 1891, is utterly silent as to any hearing by the State Board of Mr. VanVorhis upon the subject of railroad assessments in Marion county. According to that record the time of the board seems to be taken up entirely with other matters, until the day was ended, when the board adjourned until 10 o'clock A. M., August 19, 1891. Tp. 170.

Mr. VanVorhis testified as follows: Tp. 268.

Q. You appeared before the State Board of Tax Commissioners of Indiana on the 18th of August, 1891?

A. Yes, sir; and prior to that time.

Q. You were there about 8 o'clock or half-past 7 at night?

A. About half past 7, I believe.

Q. You began?

A. Between half past 7 and 8 o'clock.

Q. You met in the room in the State House where the board usually meets?

A. Yes, sir.

Q. And Governor Hovey was present?

A. Yes, sir.

Q. And all the other members of the board were present?

A. Yes, sir.

Q. And Alonzo G. Smith, attorney general, was present?

A. Yes, sir.

Q. You were at that time acting under the employment of the board of county commissioners of Marion county?

A. Yes, sir.

Q. And you made an argument or statement before that board that night?

A. Yes, sir, I spoke to that board.

Witness then stated, Tp. 158–268, that the printed copy of his argument, which will be found in the record, pp. 1–38 inclusive, is a correct copy of the statements made by him to the board on the night of August 18, 1891, beginning about half past seven o'clock, when all the members of the board and the attorney general were present.

On page 158 of the transcript, he says:

Q. Everything within those pages was said to the board?

A. Yes, sir.

Q. Were you sworn before you made those statements?

A. No, sir.

Q. Then you are not able to state that any representative of the railroad company was there?

A. No, sir, I can not say that any representative of the Big Four Company was there.

Appellant then offered the statements of Van Vorhis before the Taxing Board in evidence, which will be found on Tp. 238. They were excluded by the court, and the plaintiff at the time excepted. The portion of the statements and the tabulated estimates which relate particularly to the assessment of the Big Four property are found on pp. 246–250, six printed pages of Van Vorhis' argument. This statement was made, it will be remembered, in the presence of the board and A. G. Smith, attorney general, the legal adviser of the board, at a time fixed by the board, after it had notified plaintiff that its hearing was set for August 21, and just two days before the time it had fixed for beginning the hearing of the assessment of railroads.

The importance of this action will be seen when it is remembered that VanVorhis was the only witness who testified before this board touching the assessment of

plaintiff's property. See testimony of Gov. Matthews, Record, p. 51.

Plaintiff's case was heard in its absence, without notice, the witness was not sworn nor subject to cross-examination, and plaintiff was by this action of this board denied the opportunity to know even what evidence or arguments were introduced against it.

The question here is not whether this act of March 6, 1891, is obnoxious to the objection that it denies due process of law to railroad companies. The contention under this head is that the board by its action denied due process of law to plaintiff. It is settled, we think, that notice and an opportunity for a hearing are essential to the valid assessment of property upon which taxes are to be laid according to its value. The notice required by law is not a mere form; it must correctly state the time and place of the hearing. A false and misleading notice, that throws a party off his guard, is worse than no notice.

If it is contended that the statutory notice of the time when the taxing board began and ended its session is sufficient, and that all parties affected are required by law to be in attendance during the forty days of its session, we submit that plaintiff, when it was formally notified that the hearing as to assessments of its property would take place on the 21st day of August was relieved from the duty of attendance until that time or until further notice; although there may have been no legal obligation to give any notice other than statutory notice, and the notice given by the board was merely through courtesy, still plaintiff had a right to rely upon it. In the meantime, and before the time fixed in the notice given to plaintiff, the board set a time for hearing the attorney of an adverse party, as to assessment of railroads in Marion county, including

plaintiff's roads. It is very clear that plaintiff had no notice, statutory or other, of this hearing, and no opportunity to be present at this hearing "*to defend, enforce and protect its rights.*" The action of the board in hearing evidence and argument of adverse counsel as to assessment of plaintiff's property, after having given notice to plaintiff that the hearing would take place at a later day, was a denial of due process of law. A time was fixed by the board for the hearing as to the value of plaintiff's property of which it was not notified, but it had been formally notified that the hearing would take place at a later day, which relieved it from any necessity of attending the meetings of the board until such day arrived. It will hardly be contended that plaintiff had no right to rely upon the formal notice it received from the board. The sole object and purpose of a notice is that it may give the party an opportunity to be present at the time and place fixed for the hearing. It is given to be relied upon. If it states a wrong time or place, it is no legal notice. The plaintiff stands in a worse attitude than if it had received no notice. It received a notice fixing a time after the actual hearing took place. It can not be contended that a notice which only gives a party an opportunity to be present after the board has heard all the evidence, arguments and appeals, is all that due process of law requires. If so, "due process of law" is an empty and delusive phrase.

The action of any tribunal charged with the per formance of judicial functions, or *quasi*-judicial functions, that gives to one party to be affected by its decision, notice that the hearing of its cause is fixed for a certain day, and after having given such notice, invites a party having an adverse interest to make statements of fact and law concerning such cause at an

earlier day, in the absence of such first party and without any notice to it whatever, and accepts and hears such statements without putting the party making them under oath or subjecting him to cross-examination, without giving the other party interested any opportunity to explain or refute or disprove such statements, would be promptly set aside in all lands where the English law prevails. Such action by a master in chancery exercising the same judicial function of valuing railroad property for the purpose of marshalling the securities, or by commissioners in condemnation proceedings exercising the same judicial function of valuing property, when taken by the state under the power of eminent domain, or such action by a board of arbitrators charged with the duty of valuing the same property, would be so odious that it would not stand for an instant. And yet the error committed by any of these may be corrected. The errors or mistakes of this board can not be corrected by any other tribunal, and no right to make complaint to the board itself is secured by this law. It may even withhold its decision till the last hour of its session.

The fact that this action was by a board whose decision is final, and can not be questioned by complaint to the board that makes it, or by petition for rehearing, or review, or by any proceeding in any tribunal, certainly does not make the outrage less flagrant. What the law denounces when done by a body whose errors and mistakes can be corrected becomes more odious, as it is certainly more dangerous, when done by a tribunal whose errors can not be questioned except for fraud or want of jurisdiction.

In *Santa Clara Co.* v. *S. P. R. R. Co.*, 18 Fed. Rep. 409, 13 A. & E. R. Cases, 208, speaking with reference to assessment of railroads, Field, J., said: "It may, how-

ever, be stated generally that due process of law requires an *orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights.* A hearing or an opportunity to be heard is absolutely essential. We can not conceive of due process of law without this."

In Lewis on Eminent Domain, it is said:

"Commissioners should in all respects act fairly and openly. If they permit one of the parties to discuss with them privately and in the absence of the other the questions to be decided, such action will vitiate a decision adverse to the absentees. *Ex parte* communications touching the merits of the controversy will have the same effect."

Peavy v. *Wolfborough*, 37 N. H. 286;
Patten's Petition, 16 N. H. 277;
Harris v. *Woodstock*, 27 Conn. 567;
Lenox v. *R. R. Co.*, 62 Me. 322.

In *Johnson* v. *Holyoke Water Power Company*, 107 Mass. 473, Gray, J., said: "We have no doubt that any communication made by one party to the submission without the knowledge of the other, while the arbitrators have the case under consideration, attempting to influence them in his own favor or to prejudice them against the other party will avoid the award if seasonably objected to by the latter; because the court can not know that it did not affect the minds of the arbitrators, and must protect the innocent party from the possibility of being injured by the unlawful attempt of the other party."

In the case of *Moshier* v. *Shear*. 102 Ill. 169, it was decided that "if a party, his agent, or attorney, converses with an arbitrator, after his selection, about the fact or merits of the case, an award in such party's

favor should be set aside, on the presumption it was obtained by improper influence."

The reasoning of the court applies strongly to this case: "To sustain this award would be to sanction and justify the means by which the whole system of arbitration would be perverted and corrupted. If we hold that the party thus objecting must prove that undue influence actually resulted, then the objection would seldom be available, however corrupt the influence. Such things can seldom, owing to precautions taken by those engaged in such practices for concealment be shown by positive evidence, hence the safer rule is to hold that when it appears there has been conduct calculated to result, and which has probably resulted, perniciously, to set aside the award. If we sustain this award we shall license every person whether a partizan or not to the contest to enter into the conflict, and exercise his full influence whether inspired by friendship or hatred of the parties to the contest only excluding the unseemly and improper conduct of the parties themselves, their attorneys or agents."

V. *The state of Indiana, acting through its Board of Tax Commissioners, estimated the value of "railroad track" and "rolling stock" for taxation upon the basis of the receipts derived from the use thereof in interstate commerce and upon the basis of the amount of the stock of plaintiff in error, representing and embracing property in other states and having no situs in Indiana, used in interstate commerce, and thus, under the guise of a valuation tax, laid burdens upon interstate commerce.*

The contention is not that a valuation tax may not be laid on property within the state, used in interstate commerce, but that the means and instrumentalities of

interstate commerce, under the guise of a tax on their value, can not be taxed according to the amount of gross or net receipts derived from their use in interstate transportation; that the value of the means and instrumentalities of interstate transportation can not be "*measured*" for taxation by the amount of business done upon them, or the gross receipts therefrom, nor upon the basis of the amount of property in other states, having no *situs* in Indiana, belonging to owners thereof and used in interstate commerce. It has been repeatedly said by this court:

"It is well settled that a *state can not lay a tax on interstate commerce in any form*, whether by way of duties laid upon the transportation of subjects of interstate commerce, *or receipts derived from that transportation, or the occupation or business of carrying it on*, for the reason that such tax is a burden on that commerce, and amounts to the regulation of it, which belongs to Congress. This is the result of so many recent cases that citation is hardly necessary."

Leloup v. *The Port of Mobile* (1888), 127 U. S. 640; 8 Sup. Ct. Rep. 1384.

Pacific Express Co. v. *Seibert*, 142 U. S. 349.

Fargo v. *Michigan*, 121 U. S. 241; 7 Sup. Ct. Rep. 857.

Pickard v. *Car Co.*, 117 U. S. 34.

Norfolk Western R. R. Co. v. *Pennsylvania*, 136 U. S. 114, 118; 7 Sup. Ct. Rep. 4.

There can be no dispute as to this proposition. This contention turns upon questions of fact.

1. Did the Board of Tax Commissioners, in estimating the value for taxation of the "rolling stock" of plaintiff in error, base such estimate in whole or in part upon the amount and value of the rolling stock of

the value of an engine or car or other property coming within the class of property denominated in the act under consideration as rolling stock be determined by considering the purpose for which it was used in any state or subdivision of a state or the costs of construction of the same, and to limit the right of the state to tax 'rolling stock' which might, at the date of assessment, be found within the state or subdivision of the state would be, in effect, to release such property from taxation."

"A railroad is valuable as a whole, and every section of the line going to make up the whole is essential."

Counsel argue (see Record, p. 234) that "A consolidated railway company, consisting of various lines originally chartered by several states, but consolidated into one system under the laws of each of these states, becomes in law the corporation of each of the states;" and the court below, adopting this rule, says (Record, pp. 457, 458): "When the whole act is read together, it purports to be only an act to tax such property as is subject to taxation within the state. Section 80 declares that the movable property belonging to a railroad company shall be held to be personal property, and denominated personal property, while section 3 provides that 'all property within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.' Section 4 provides that for the purpose of taxation real property shall include all lands within the state, etc. Personal property shall include all goods and chattels within the state, all ships, boats, whether at home or abroad, and their appurtenances; all goods chattels and effects belonging to inhabitants of this state situate without this state, except the property actually and *permanently* invested in business in another state."

"The record of the State Board, which, as we have said,

is conclusive, affirmatively shows that the valuation of 'railroad track' and rolling stock was fixed upon such property within this state. The record affirmatively shows that 'the State Board of Tax Commissioners, *having had under consideration the assessment* OF THE SEVERAL RAILROADS IN THE STATE, *the following valuation per mile* OF THE VARIOUS ROADS within this state;' then follows the schedule and valuation. Following such schedules and valuation, it is stated, that, '*making liberal allowances for all proper deductions,*' they 'fix the values' as hereinbefore set forth.''

It thus appears that, by this act, all the movable property of a consolidated railway company, although it is operated upon separate and distinct leased lines in other states, which do not belong to the consolidated company, and although it is never used in the state of Indiana, and although it is subject to taxation in the states where it is used, nevertheless has its *situs* in Indiana, and is subject to taxation there, to raise the average valuation per mile of rolling stock in that state, and a burden is thus laid upon interstate commerce by taxing rolling stock used in interstate commerce, where a company operates railways in more than one state, according to the amount of rolling stock owned and used in other states on separate and distinct leased and operated lines of railroad.

2. Did the Board of Tax Commissioners estimate the value of the "railroad track" and "rolling stock" of plaintiff in error for taxation upon the basis of the gross or net earnings derived from the use thereof in interstate commerce, and upon the amount and value of the stock of plaintiff in error, representing property in other states, having no *situs* in Indiana, used in interstate commerce?

Of course, if railroad track and "rolling stock" can

be valued for taxation according to gross earnings and receipts derived from the use thereof in interstate commerce, the exclusive power to regulate interstate commerce does not rest in Congress. The State Board of Tax Commissioners can lay prohibitory burdens upon interstate commerce.

Or, if the value of "rolling stock" or "railroad track" can be "measured" for taxation by the amount of other property belonging to the owners thereof, having no *situs* in Indiana, used in interstate commerce in other states, the provision of the constitution, protecting interstate commerce from state regulations and state burdens, is vain.

Upon such a basis the rolling stock of an interstate road may be assessed two or three times as high as rolling stock, equal in amount and value of a road wholly within the state. A locomotive or a sleeping car of the market value of $10,000 may be assessed on a basis of earnings for taxation at twice that sum; while other locomotives and sleeping cars of the same kind and worth, used solely in the state, may be assessed at their real value.

A railroad track from Terre Haute to Indianapolis, for instance, owned by a consolidated company, owning roads in other states used in interstate commerce, upon the basis of the value of the capital stock of such company, may be assessed far higher per mile than a parallel road between the same cities doing business wholly within Indiana.

Section 85 of the act requires every company operating a railroad in this state to furnish to the auditor of state—

"*Fourth.* A statement or schedule showing:

"1st. The amount of capital stock authorized and

the number of shares into which such capital stock is divided.

"2d. The amount of capital stock paid up.

"3d. The market value, or if no market value, then the actual value of the shares of stock.

"4th. The total amounts of all indebtedness except for current expenses for operating the road.

"5th. The total listed valuation of all its tangible property in this state. *Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state.*"

The act provides:

Section 120. It shall be the duty of the State Board of Tax Commissioners:

"*First.* To prescribe all forms of books and blanks used in the assessment and collection of taxes, and to change such forms when prescribed by law, in case any such change shall be necessary."

"*Fourth.* Especially to see that all the *railroads* and other corporations of the state are assessed and taxed as provided by law."

Section 129 provides that the Board shall meet on the first Monday of August in each year, "For the purpose of assessing *railroad property;* * * * they shall not be bound by any reports or estimates of value of *railroad property,* real estate or other property, as returned to the county auditors or to the auditor of state, but shall appraise and *assess all property* at its true cash value, as defined by this act, according to their best knowledge and judgment, and so as to equalize the assessment of property throughout the state."

It will be observed that this act, which limits the jurisdiction of the State Board to the assessment of "railroad track" and "rolling stock," requires consolidated roads to return the entire amount of their capital stock,

and the value thereof, and that, in section 120, it charges the board "especially to see that all *railroads* of the state are assessed and taxed, as provided by law."

And in section 129 the act provides that they shall appraise and assess *all property* at its true cash value.

It will at once be seen that, by requiring a return of capital stock and the value thereof by railroad companies and by enjoining upon the Board especially to see that all *railroads* of the state are assessed, and authorizing them, in section 129, to meet for the purpose of assessing *railroad property*, which, of course, includes property other than railroad track and rolling stock, assessed by local assessors, that the act itself invites the Board to include in its valuations *railroad property* besides "railroad track" and "rolling stock" and calls special attention to the amount of capital stock, as a "measure of the value" of the railroad property they are required to assess.

In construing this act, the Supreme Court of Indiana, in its opinion of this case, Record, p. 456, said: "It is evident that no fair or equitable value could be placed on 'railroad track' by severing it into parts extending from one township or county line to another, *or even from one state line to another, and estimating only the portions lying within the borders of a single* township, county or *state*, independently of its connection beyond such lines. * * * * * *A railroad is valuable as a whole, and every section of the line going to make up the whole is essential.* Record, p. 457. * * * * *Presumptively the line of railroad track and rolling stock is of no greater value per mile beyond the borders of the state than within the borders of the state*, and we do not think the law necessarily requires a construction by which, if the line of railroad track and rolling stock situate outside of the state was of greater value per mile than

that inside of the state, that the Board should by equalizing the value, import values and tax property situate and taxable without the limits of the state and taxable in another state." Record, p. 457.

It will thus be seen that this act, as construed by the Supreme Court of Indiana, authorizes the State Board, in assessing "railroad track" and "rolling stock" which alone it has jurisdiction to assess, to take into account and consider the railroad as a whole and "every section of the line going to make up the whole," within and without the state, and to act upon the presumption that the railroad track is worth no more per mile without the state than within it.

The opinion of the Supreme Court puts upon this act the same construction upon which the Board acted. The board is not limited to estimating only the portion of railroad lying within the borders of the state. "The railroad is valued as a whole, and every section of the line going to make up the whole is essential." "Presumptively the line of railroad track is of no greater value without the borders of the state than within the borders of the state."

We submit that this act, as construed by the Supreme Court of Indiana, authorizes the Board of Tax Commissioners, in estimating the value of railroad track, to base such estimate in whole, or in part, upon the amount and value of the "*railroad*," including property which the board had no right to assess, but which is assessed, under this act, by local assessors, and including property outside of the state and having no *situs* in this state and used in interstate commerce.

But not only this, as we have seen, the act confers the right to make rules and regulations and prescribe forms and blanks to be used in the assessment, and the board, not being content with the amount and value of

the stock required to be reported by the act, required the gross and net earnings of the entire road within and without the state to be reported to the auditor of state. These embraced, as we have already shown, leased and operated lines not parts of the consolidation and wholly distinct and separate from the "roads" assessed by the board, except they were operated by the same company.

This board, with power to construe the law without revision or control (section 120, 2d clause, Act of '91 of Indiana, p. 250); with power to make such rules and regulations as it may deem proper (section 120, 8th clause, *supra*); with power to prescribe all blanks used in assessments (section 120, 1st clause *supra*), requires railroad companies operating railroads in more than one state to report to it the

"GROSS EARNINGS OF THE ENTIRE ROAD, AS SHOWN BY LAST OFFICIAL REPORT OF COMPANY .....$

"NET EARNINGS OF ENTIRE ROAD, AS SHOWN BY LAST OFFICIAL REPORT OF COMPANY..

"*Gross earnings of miles of road within this state, as shown by the last official report..*

"*Net earnings of miles of road within this state, as shown by last official report.....*

"*Average annual net earnings per mile over entire road, as shown by last official report.*

"*Average annual gross earnings per mile over entire line, as shown by last official report.*

"NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

"J. O. HENDERSON, *Auditor of State.*"

See Record, p. 231.

The only purpose for which this report could be required is that stated in the brief of defendant in error in the Supreme Court in this case (page 62): "These items of information were designed by the legislature to be *measures of value by which the board could ascertain the true cash value of the property properly taxed in Indiana.*" That is, the cash value of property taxable in Indiana is to be *measured*, not by what the property is worth in the market, but by the value of the capital stock of a consolidated company, representing and embracing property in other states and having no *situs* in Indiana, and used in interstate commerce, and by the receipts derived from the use of such property in this and other states in interstate commerce.

There is, indeed, no other purpose for which such returns could be used, except to consider these gross earnings and the value of this capital stock as "MEASURES OF VALUE" of property subject to taxation in Indiana used in interstate commerce, and that is precisely what we insist can not be done without laying burdens upon interstate commerce.

But the State Board of Tax Commissioners, in their record, have left no room for dispute as to what they actually did. Record, p. 184.

"The State Board of Tax Commissioners, having had under consideration the assessment of the SEVERAL RAILROADS in the state, the following valuation per mile of the various ROADS within this state, and the improvements on the right of way and in daily use by such railroads, was unanimously agreed upon, and the same was ordered to be spread upon the record and to stand as the assessment of the railroad property denominated railroad track, rolling stock and the improvements on right of way for the year 1891, which assessment is in the words and figures, to wit."

On page 213 they say (Record, p. 184): "Making liberal allowances for all proper deductions, the State Board of Tax Commissioners *has fixed the values of the respective* RAILROADS AND PARTS OF ROADS within the state of Indiana *for taxation* on the first day of April, 1891, as hereinbefore set forth.

"In arriving at *the basis for the estimate of said values the Board has considered* the cost of construction and equipment of said roads, *the market value of the stocks and bonds, the gross and net earnings of each of said roads* and all other matters appertaining thereto that would assist the Board in arriving at a true cash value of the same," that is, of the "*roads.*"

It will be observed,

1. That the values which they assessed are values "*for taxation,*" and not *cash values.*

2. That they are the values of "*railroads and parts of railroads,*" and not the values of "railroad track" and "rolling stock."

3. That, in arriving at the basis for the estimate of said values, that is, of railroads and parts of roads, they have considered, among other things, the market value of the stocks and bonds and the gross and net earnings of each of said roads.

4. That, having under consideration the assessments of the various RAILROADS, the value per mile of the VARIOUS ROADS was unanimously agreed on.

5. "And the same was ordered to be spread upon the record and *to stand as the assessment of railroad property denominated 'railroad track' and 'rolling stock.'*"

The board reports that they fixed the values of "*railroads and parts of roads,*" thus embracing property which they had no jurisdiction to assess. They arrived at the basis of value of these railroads and parts of roads by considering the earnings of roads and the

value of the stock, representing property used in interstate commerce, wholly without the state of Indiana; and, having reached the result as to the value of the "ROADS," they then agreed that this result should be spread of record and *stand as the assessment of "railroad track" and "rolling stock,"* which alone they had authority to assess.

This board required plaintiff in error to report the amount of the stock of the consolidated company, being the only stock issued by this company, and representing millions of dollars worth of property used in interstate commerce and in commerce in other states wholly without the state of Indiana; and it required plaintiff in error to report to it the gross earnings of plaintiff in and out of the state of Indiana. That is to say, the Board required plaintiff to report to it the amount of property used by it in interstate commerce as represented by its stock, and the earnings derived from the use of such property in interstate commerce; and then, the jurisdiction of this board being limited to the assessment of railroad track and rolling stock, the board assumed to assess "railroads and parts of roads," and fixed the value of "railroads and parts of roads" upon the basis of the stock of plaintiff, representing property used in interstate commerce, some of it wholly without the state of Indiana, and gross earnings of plaintiff, derived largely from interstate commerce and commerce in other states than Indiana, and this value thus arrived at of "the roads and parts of roads," the Board ordered *to be spread of record and to stand as an assessment of the value of "railroad track" and "rolling stock,"* which alone they had jurisdiction to assess.

Let us take an illustration: The National Linseed Oil Company is a corporation owning oil mills in several states. There are oil mills in Indiana not belong-

ing to this corporation. Suppose the local assessor makes an assessment of two mills, one of the National Linseed Oil Company and the other belonging to an individual or corporation. Suppose the mills are of equal value, equal earning capacity, but the assessor adopts a rule by which he assesses the property of the National Linseed Oil Company for taxation on the first day of April, 1890, by considering "the market value of the stocks and bonds, the gross and net earnings" of the National Linseed Oil Company, said stocks and bonds representing property in other states, and said earnings produced by property in other states of far greater earning capacity than the mills in Indiana; and in pursuance of such rule values the mill belonging to the National Linseed Oil Company six thousand dollars higher than the mill which belongs to the domestic corporation. And suppose this system applies to a large class of mills in the state belonging to corporations owning property partly within and partly without the state, it would be precisely such a case as the court below held we had no right to introduce evidence to establish, except in that case there would be no question of taxing interstate commerce.

The case we present is as strong as that of an individual who owns separate farms in three states, if the assessor should assess his farm in Indiana by taking into consideration the amount of mortgages which rest upon all his farms in Ohio, Indiana and Illinois, and the gross and net earnings of all his farms in Indiana, Ohio and Illinois. The only difference between the case of the farmer and the railroad company is that one is a corporation engaged in interstate commerce and the other an individual not engaged in commerce. The question of the amount of gross and net earnings of the farm in Ohio can in no manner affect the value of the farm in

Indiana; neither does the amount of the gross and net earnings of the road from Cincinnati to Cleveland, with an earning capacity far greater than any of the plaintiff's roads in Indiana, affect the value of the line of road between Terre Haute and Indianapolis. They are not parts, even, of the same road.

The following are the steps in this method of laying burdens on interstate commerce under the guise of a valuation tax on property, as shown by the records of this board:

1. The board has only power to assess railroad track and rolling stock, according to its actual market value.

2. The board requires a report to be made to it by plaintiff in error, of all its stock, resting to a great extent upon property wholly without the state of Indiana, used in interstate commerce, and the greater portion of which has no *situs* in Indiana.

3. It requires a report to be made by plaintiff of its entire gross earnings within and without the state of Indiana, a great portion of which is derived from interstate commerce wholly without the state of Indiana.

4. Next, when it comes to make assessments, instead of placing a cash value upon railroad track and rolling stock, it places a value upon "railroads and parts of roads," embracing elements of value not inhering in, or appertaining to "railroad track" or "rolling stock," and, instead of placing a cash value upon railroads and parts of roads, it returns "a value for taxation."

5. And it expressly states in its certificate that, "in arriving at the basis for the assessment of the value" for taxation placed upon roads and parts of roads, it considered the stock, representing property used in interstate commerce, some of it wholly without the state of Indiana, and the gross earnings, derived from the use of such property in interstate commerce; that is, the

estimate of value which it made was based in part upon the earnings derived from interstate commerce and the value of the property used, in interstate commerce, without the state of Indiana, and then, having agreed upon said value "of road and parts of roads" it ordered the same to be spread of record and to stand as an assessment of "railroad track" and "rolling stock," which it had jurisdiction to assess.

Counsel for defendant in error urge: "All these (returns of stock and earnings) are indispensable indexes of THE VALUE OF THE ROAD AS A UNIT, and therefore of the value of that part of it that lies in Indiana" (Defendant's brief below, p. 99).

The point that we make is, that, in estimating "*the value of the road as a unit*," you must include and embrace the value of property not subject to assessment by the state board, the value of lines of different earning capacity out of the state, and leased lines which are not parts of the consolidation, with their franchises wholly without the state of Indiana.

It is again urged:

"Proper deductions from *the general railroad property—the entire property*—are the 'machinery, stationary engines, and other fixtures' named in section 78, and all the property named in sections 81 and 82, because these are not to be assessed by the board, but by the local assessing officers. When, therefore, the board certifies that it made 'liberal allowance for all proper deductions,' it can but be held to mean that they have carefully abstained from assessing local properties," etc. (Defendant's brief below, p. 97).

The point we make is that this law, as construed by the court below, authorizes this estimate of "*the general railroad property—the entire property*," embracing property conceded to be out of the jurisdiction of the

court, and authorizes the board to make such *estimate of the "entire property,"* upon the presumption that a mile of the railroad track of the consolidated or operated lines between Cleveland and Cincinnati is of the same value as a mile of the line between Indianapolis and Terre Haute, and thus lays burdens on interstate commerce by estimating the value of the means and instruments of interstate commerce, for taxation, according to the value of *"the entire property"* belonging to the owners of such means and instruments, embracing property having no *situs* in this state.

These "liberal allowances for proper deductions" are conceded to be from the estimate of the value of "the general railroad property—the entire property." What "deductions" are *"liberal"* and *"proper"* depends solely upon the arbitrary action of the board. This method is wholly different from that prescribed for the assessment of other property, and not only lays burdens on interstate commerce, but deprives railroad companies operating roads in Indiana and also in other states of the protection of equal laws.

It is thus very clear that they did lay burdens upon interstate commerce and, under the guise and pretense of the valuation of "rolling stock" and "railroad track," assessed a value upon "railroads," upon the basis of their gross earnings in interstate commerce and upon the basis of property used in interstate commerce in other states than Indiana.

It also clearly appears:

VI. *That the act of March 6th, 1891, as construed by the Supreme Court of Indiana, permits, invites and authorizes the assessment of "railroad track" and "rolling stock" for taxation upon the basis of the receipts derived from the use thereof in interstate commerce and upon the*

basis of the amount of stock of consolidated companies, representing and embracing property in other states, and having no situs in Indiana, used in interstate commerce, and thus permits, invites and authorizes the laying of burdens upon interstate commerce under the guise of a valuation tax upon property used in interstate commerce.

VII. *The act of March 6, 1891, authorizes the board "in arriving at the basis for the estimate of the value of railroads" used in interstate transportation to consider as a "measure of value" the gross and net earnings thereof derived from interstate commerce, and to consider the capital stock representing property used in interstate commerce wholly without the state of Indiana and having no situs in said state; and to set this value down to stand as the value of railroad track and rolling stock for taxation, thus prescribing a different rule by which to measure the value of railroad track and rolling stock from that applied to other property and thereby discriminating against railroad companies and depriving them of the protection of equal laws, and laying burdens on interstate commerce.*

The law does not authorize the assessor, in arriving at the value of a farm, to consider as *a measure of its value* the amount of other property used by the owner in farming in other states, nor gross or net income received by such owner from such farms in this and other states. The law authorizes no such method to measure the value of a farm in Indiana, nor of any other property except that of railroad companies. The value of the real estate belonging to the National Linseed Oil Company in Indiana *can not be measured* by the number of oil mills it owns in other states, or the amount of other property used in its business, or the amount of earnings therefrom, yet this method is applied to the

real estate, denominated railroad track, used in interstate commerce, and its value is measured by the value and earnings of separate and distinct roads in other states.

But it is argued all these roads are parts of one system, and it is assessed as a unit.

The contention is that no such rule applies to any other real estate or personal property, parts of any system in any other kind of business, and that by this discriminating rule of assessment of the instruments and appliances of interstate commerce under the guise of taxation according to value, a tax is laid on interstate commerce, and railroad companies engaged therein are denied the protection of equal laws.

It is perfectly clear that if the instruments of interstate commerce can be valued for taxation according to the amount of receipts derived from their use, then the state can, in this form, tax the receipts derived from interstate transportation. If the earnings in interstate commerce can be considered as *measures of value "in arriving at the* BASES OF THE ESTIMATE *of the value"* of the instruments of interstate commerce, then there is a "form" in which a tax can be laid on the receipts from interstate commerce. If a different rule can be applied in the assessment of the instruments of interstate commerce from that applied in the assessment of other property, by which elements of value can be considered in the assessment of the former, that are not considered in the assessment of the latter, and by which the value for taxation, and therefore the taxes imposed, can be "*measured*" by the earnings derived from the use of such instruments in interstate transportation, and by the value of other property used by the same owner in interstate commerce in other states, then a state, by this method, may regulate, burden and pro-

hibit interstate commerce, notwithstanding the constitution of the United States.

If a method of assessment like this receives the sanction of the court, the constitutional provision protecting interstate commerce from burdens, imposed by State Boards of Taxation, is vain.

Counsel for defendant in error indeed admit in their brief below, page 90:

"THE BOARD ASSESSED THESE VARIOUS LINES AS ONE SYSTEM, CONSIDERING THEM IN THEIR RELATIONS TO EACH OTHER AND THE WHOLE."

They say further on page 99 of their brief: "Therefore the schedules—of gross and net earnings of the entire system—which the law requires to be returned, required not only a description of its physical condition, specified in the first three clauses of section 85, but also the amount of its capital stock authorized and paid up, with its market and actual value, the ROAD'S indebtedness, etc. All these are indispensable indexes OF THE VALUE OF THE ROAD *as a unit*, and, therefore of the value of that part of it which lies within the borders of Indiana."

On page 100 they say: "We affirm that the information required in these schedules constitute the best possible measures in determining the 'true cash value' of taxable property of railway corporations within the State. The length of main track, second track, sidings, turnouts and the terminals OF THE ROAD INDICATE ITS POSSIBILITIES FOR BUSINESS, and, therefore, its potential value; the capital stock authorized indicates the probable value which its promoters believed it would attain; its capital stock paid up indicates the confidence IN THE ROAD'S POSSIBILITIES which capital was willing to back with its gold; the market and actual values of

its stock shows, by the best possible test, the judgment of the market itself *upon the* ROAD'S VALUE, while the INDEBTEDNESS OF THE ROAD, over and above earning expenses, demonstrates to what extent capital was willing to invest, in addition to the capital stock paid up."

And they argue that this is a legal and constitutional method to assess *the value for taxation of property* within the state of Indiana, because the legislature, in levying an *excise or license tax*, may, in the exercise of its arbitrary power, measure the amount of *such excise or license* tax by what rule it sees fit.

It is argued that because it was held in *Maine* v. *Grand Trunk R. W. Co.*, 142 U. S. 217, and in the *Delaware R. R. Tax Case*, 18 Wall. 231, that the legislature, in *levying an excise tax*, has power to measure the amount in any way it pleases, therefore it may authorize a board charged with the duty *of making a valuation of property* upon which taxes are to be laid, to "*measure*" the value of property used in interstate commerce by the earnings derived from the use of such property, and by the amount of other property used by the owners thereof.

In the *Delaware R. R. Tax Case*, quoted in appellee's brief, *supra.*, Justice Field said: "The state may impose a tax upon the corporation as an entity, existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property, and the manner in which its values shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion." In that case the court held that the tax was not a tax upon the value of property at all, but *upon the corporation itself*.

In that very case Justice Field said, on the very same page from which counsel for appellee has quoted: "In the second place, assuming that the tax is upon

the property of the corporation, if the ratio of the value of property in Delaware to the value of the whole property of the company be less than that which the length of the road in Delaware bears to its entire length, and such is admitted to be the fact, a tax imposed upon the property in Delaware according to the ratio of the length of its road to the length of the whole road must necessarily fall upon property out of the state. The length of the whole road is in round numbers one hundred miles; the length in Delaware is twenty-four miles. The tax upon the property estimated according to this ratio would be in Delaware .24 or 6-25ths of the amount of the tax upon the whole property. But the value of the property in Delaware is not 6-25ths of the value of the whole property, but much less than this proportion would require. We repeat, therefore, that upon the assumption made by the appellant, there would be difficulty in sustaining the tax." And then the court goes on to hold that the tax is not imposed upon the property of the corporation, but is a tax upon the corporation itself.

Speaking of the case of *Maine* v. *Grand Trunk R. W. Co.*, *supra*, counsel say (Brief below, 104): "It is no answer to say that this was an excise tax. This difference between *ad valorem* and excise taxation is well understood; but the exact point involved at present is that a state *can not tax values outside of its jurisdiction, under any guise whatever*, excise or otherwise. And if the mileage method results in the importation of value in one case, it does in the other."

This argument overlooks the fact that the tax in *Maine* v. *The Grand Trunk R. W. Co.*, *supra*, was *not a tax upon property*, but upon the corporation itself.

The argument is that because the legislature has the right to impose an *excise tax or a license tax upon a cor-*

poration, and measure it by what rule it may, that when it fails to do this, and provides for *a tax to be levied on values*, that it may authorize the tribunal charged with the judicial function of estimating such values, to adopt the method of arriving at the value of property used in interstate commerce, by "measuring" its value for taxation by the amount of earnings received from its use, and the amount of other property in other states used in interstate commerce by the same owner, while all other property is assessed according to its market value, without considering the earnings derived from its use, or the other property belonging to the owner.

VIII. "*Though the law itself be fair upon its face, and impartial in its appearance, yet if applied and administered by public authority with an evil eye and an unequal hand, so as to practically make an unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution of the United States.*"

Yick Wo v. *Hopkins*, 118 U. S. 373.

This case presents the taxing act of 1891, in the language of that opinion, "in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons, as to warrant and require the conclusion that, whatever may have been the intent of the act as passed, it is applied by the public authorities, charged with its administration, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States."

The Board holds a meeting by appointment in the night-time, without notice to the parties to be affected, and having given them formal written notice that the hearing of their assessment would take place at a later day, "and that they would be required to put in writing their statements regarding the assessment of their property, and that only brief oral statements could be heard," proceeds to hear arguments at great length and evidence from a party employed to procure an increase of the assessment of railroads, not under oath, nor subject to cross-examination, in the absence of the parties to be affected, as to the value of the stocks and bonds and securities and gross and net earnings, which it required to be reported.

No inspection was made of any line; no witnesses examined as to the character or condition of plaintiff's railroad track. The Board resorted to "other sources of information," which were not disclosed to plaintiff. The making of the assessment is postponed until four days before the conclusion of the term which the Board is allowed to sit; no notice is given to the railroad company of any increase in the returns made by it until it is too late for it to raise any question, even if it had a legal right to do so; the record of the assessment is not completed until the last day of the term, so that it was impossible for plaintiff to know what the Board had done until its adjournment.

The board thus deprived plaintiff in error of the opportunity to be present at the hearing of the original assessment by a misleading notice, and it deprived plaintiff in error of any opportunity even to petition the Board for a correction of the errors committed by it, by withholding its assessment until the fourth day before the close of the term, and by withholding it

from the record and from the knowledge of plaintiff until the final adjournment.

The board required plaintiff to return the amount of its gross earnings made upon lines owned and operated by it in Ohio, Illinois and Indiana, and agreed upon a valuation of the "railroads and parts of roads" belonging to, or operated by, plaintiff in the state of Indiana, estimated upon the basis of the value of the stocks of the consolidated company and the amount of the gross earnings of the plaintiff, derived largely from interstate commerce, and from lines wholly without the state of Indiana, separate and distinct from the lines assessed by plaintiff, thus embracing and blending in its returns values without the jurisdiction of the board and laying burdens upon interstate commerce, and then ordered these valuations to be spread of record and stand for values of property which they had jurisdiction to assess.

No more ingenious scheme can be devised for discriminating against railroad companies engaged in interstate commerce by measuring their property by a different rule from that by which other property is measured for taxation, and thus depriving them of the protection of equal laws and laying burdens upon interstate commerce in defiance to the Constitution of the United States.

This record shows no effort by this board to arrive at the value of "railroad track and rolling stock." What they undertook to do was to arrive at the value of the "general railroad property—the entire property of 'railroads,'" embracing all their property, within and without the state, and load this value upon railroad track and rolling stock, which they had power to assess.

If an assessment under a law like this, administered as this has been, can stand, then the Supreme Court of

the United States is wrong in its repeated assertion that the constitution does not "*leave room for the play and action of purely personal and arbitrary power.*"

Respectfully submitted,

JOHN T. DYE,

for Plaintiff in Error.

September 15, 1893.

154-439

Case No. 15,269.

OCT 12 1893
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1893.

TERM NO. 899.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,

vs.

VICTOR M. BACKUS, AS TREASURER OF MARION COUNTY, INDIANA, ET AL.

LOCAL AUTHORITIES FOR LOCAL PROPERTY, GENERAL AUTHORITIES FOR GENERAL PROPERTY, THUS SECURING, BY APPROPRIATE METHODS, EQUALITY OF BURDENS; SUCH IS THE SPIRIT OF THE REVENUE LAWS OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

WM. B. BURFORD, PRINTER, INDIANAPOLIS.

Case No. 15,269.

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vs.

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In error to the Supreme Court of the State of Indiana.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

Regarding it as improper to becloud the only questions before this Court for decision, by the discussion of collateral and irrelevant matters, we shall not discuss

1. The propriety of the rulings of the trial

Court in excluding or admitting testimony. This question is not presented by assignment of errors.

Supreme Court Rules, No. 21.

Assignment of Errors Rec., p. 194, *et seq.*

2. Nor the weight of the testimony admitted: this Court, being, in this case, purely a court of appeal, will not weigh testimony.

3. Nor statements of counsel made as if the matter of such statements were in evidence, the same not being in the record; this Court will not consider as evidence, mere statements of counsel.

4. Nor the correctness of the judgment of the State Board of Tax Commissioners as to what really was "the true cash value" of appellant's "railroad track" and "rolling stock." Whether they erred in arriving at the precise and exact cash value of this property—whether their appraisement was too high or too low, is nothing to this Court; this Court will not substitute its judgment on the value of this property for that of the State Board of Tax Commissioners.

State Railroad Tax Cases, 92 *U. S.* p. 616.

5. Nor the correctness of the construction of the tax law of Indiana by the Supreme Court of Indiana. How the statute reads, what the statute *means*, what rights it gives or withholds, *what it really is*, are questions for the Supreme Court of Indiana. Rightly or wrongly construed by the highest court of a State, the statute of that State, as so construed, *is the law* this Court considers. Whether the statute as thus construed, violates the

Constitution or laws of the United States is the question to which this Court addresses itself.

Louisiana v. *Pilsbury*, 105 U. S. 294.
Bucher v. *Cheshire Ry. Co.*, 125 U. S. 582.
State Railroad Tax Cases, 92 U. S. 618.
Kentucky Railroad Tax Cases, 115 U. S. 334.
Palmer v. *McMahon*, 133 U. S. 665.

6. Nor any alleged defect or "vice of the law," *except as the defect is charged to be a violation of the Federal Constitution.* BEFORE THIS COURT WE ARE DISCUSSING FEDERAL QUSTIONS ONLY. However interesting the examination of different systems of taxation, and the particular scheme of revenue now in operation in Indiana, we understand that the limits of the present discussion does not embrace them, but confine us strictly and exclusively to the question: DOES THE REVENUE LAW OF INDIANA OR THE ASSESSMENT OF APPELLANT'S PROPERTY UNDER THEM, VIOLATE THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES?

It would be a pleasure to meet appellant upon any of the grounds above indicated, where we feel that the cause of the State could be maintained before this high tribunal, with the same ease that it was maintained in the Courts below; but we understand that these questions have been disposed of, and we feel that we have no right to burden the strength nor exhaust the patience of this Court with discussions entirely irrelevant, and as lengthy as irrelevant.

Thus clearing the case of an enormous quantity of immaterial controversy, we shall confine ourselves strictly to the questions before the Court.

We shall adopt the following order of discussion in this brief:

1. The provisions of the law whose constitutionality is here questioned.
2. The construction which the Supreme Court of Indiana has placed upon these provisions.
3. The construction which the railway companies themselves placed upon these provisions.
4. The objections which the raidroad companies make to these provisions, and to the assessment of their property made pursuant thereto.

I.

The Law.

TAXATION OF ALL PROPERTY, AT ITS TRUE CASH VALUE, THUS SECURING EQUALITY OF BURDENS, IS THE SPIRIT OF THE REVENUE LAWS OF INDIANA.

The law assailed in these cases is the Indiana Tax Law of 1891.

So far as pertinent to this controversy, its provisions are as follows:

LOCAL PROPERTY.

(*a*) All property, except that denominated "railroad track" and "rolling stock" is subject to valuation and assessment by the local taxing officers of the township and county where the property is. Any property owner objecting to this assessment may complain to the County Board of Review. From the decision of the County Boards of Review, an *appeal* is allowed to the State Board of Tax Commissioners, whose judgment is final and irrevocable.

(*b*) The law declares that these county boards shall have "*power to hear complaints* of any owner of personal property except 'railroad track' and 'rolling stock' of railroads, to equalize the valuation of property and taxables," and that "it shall pass upon each valuation and may, *upon sufficient cause being shown*, or on its own motion, correct the assessment and valuation of any property in such manner as will, in its judgment, make the valuation thereof just and equal,"

Sec. 114, Indiana Tax Law, 1891.

(*c*) In addition to other powers and duties, specifically given to the State Board of Tax Commissioners, said Board is also expressly given "*all the powers given to County Boards of Review.*"

Sec. 129, Indiana Tax Law, 1891.

GENERAL PROPERTY—"RAILROAD TRACK" AND "ROLLING STOCK."

(*a*) "The right of way, including the superstructures, main, side or second track and turnouts, turn-tables, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad companies on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation and denominated '*railroad track*.'"

Sec. 78, Indiana Tax Law, 1891.

(*b*) The movable property belonging to a railroad company shall be held to be personal property and denominated, for the purpose of taxation, "*rolling stock*."

Sec. 80, Indiana Tax Law, 1891.

(*c*) The State Board of Tax Commissioners *originally* appraise and assess "*railroad track*" add "*rolling stock*" "at its true cash value."

Secs. 129–137, Indiana Tax Law, 1891.

(*d*) For this purpose the Board convenes "in the office of the Auditor of State" on the "first Monday of August of each year," and remains in session forty days. The office of the Auditor of State is in the State Building at Indianapolis, the capital of the Commonwealth.

Sec. 129, Indiana Tax Laws, 1891.

(*e*) For the use of the State Board of Tax Commissioners, the owner, constructor or operator of any railroad in Indiana is required to furnish verified schedules of "railroad track" and "rolling stock" with the items constituting the same, and many facts throwing light upon their value, including the amount of capital stock authorized and paid up, and the market value thereof, the railroad's indebtedness, except for operating expenses, and the total listed valuation of all its tangible property in the State. Between April 1 and June 1 of each year, these schedules, or statements, must be submitted to the Auditor of the State, who is *ex officio* a member of the State Board of Tax Commissioners, and the State Auditor lays these statements and schedules before the Board when it convenes.

As to *notice*, the law distinctly states the time, place, duration and purpose of the session of the State Board of Tax Commissioners; as to *hearing*, the law requires exhaustive statements from railroad owners, etc., respecting their property to be laid before the Board, and expressly gives the State Board all of the powers and duties of County Boards, among which is "*the power to hear complaints*," which necessarily implies *the right to make complaints*.

Secs. 83, 85, 87, 114, 129, Indiana Tax Law, 1891.

II.

THE LAW, AS CONSTRUED BY THE SUPREME COURT OF INDIANA.

The Supreme Court of Indiana, after patient hearing of oral argument extending through two entire days, and after studious consideration of many hundreds of pages of briefs, by counsel for the railways, construed this law to give to the owners, operators or constructors of railways, full notice and full opportunity to be heard, and this not as a matter of favor, but *as a matter of right*. The Court, speaking through Mr. Justice Olds, said:

"As to property other than that denominated by the law as 'railroad track' and 'rolling stock,' including all property, real and personal, of individuals, the law provides for its assessment by assessors, and it creates County Boards of Review in the several counties of the State, and by section 114, from which we have hereinbefore quoted, it is provided that such county board shall pass upon each valuation, and may, *on sufficient cause being shown*, or on its own motion, correct the assessment or valuation of any property in such manner as will, in its judgment, make the valuation thereof just and equal.' This section, while it may not give to County Boards the right to change individual assessment of parties not legally before the Board, *evidently contemplates and gives the right to parties whose property has been wrongfully or erroneously assessed, the right to voluntarily appear before such County Boards and show that the assessment made against any property is erroneous, and* HAVE IT CORRECTED, and it vests in such County Boards the power, on such showing being made, or on their own motion, to make correction and change the valuation, and from a decision made against a party who is before

such County Board, it gives an appeal to the State Board of Tax Commissioners, whose decision upon the question shall be final.

"By section 129 of the statute from which we have heretofore quoted, this same *right to be heard* given to all property owners and the power vested in the County Boards of Review to correct and change assessments, by section 114, *is engrafted into and made a part of the law governing the proceedings before the State Board as to valuation and assessments over which State Board has jurisdiction and control; for, by section 129, supra, it is declared that the State Board is hereby given all the powers given to County Boards of Review.* The right of parties who voluntarily appear to be heard, and the right of the County Boards to hear showings made by such parties as to assessments, and to correct and change assessments and valuations, are a part of the powers vested in the County Boards, and *such power is transferred and vested in the State Board, so that if there is any power in the County Boards to hear grievances and make corrections in relation to property and assessments over which they have jurisdiction,* THEN THE STATE BOARD HAS THE SAME POWER IN RELATION TO PROPERTY AND ASSESSMENTS OVER WHICH IT HAS JURISDICTION.

"Counsel claim and argue that this right of hearing and to make corrections exist before the County Boards, and we think it does, but they insist that this right does not exist before the State Board, *but with this latter contention we can not agree, for certainly, by the words of the statute we have quoted, the same power in this respect is vested in the State Board as is vested in County Boards in relation to property and assessments over which it has jurisdiction,* and if the State Board has jurisdiction over the property and assessments of railway companies denominated 'railroad track' and 'rolling stock,' *then railway companies have the right to be heard and the State Board has the right to correct any assessment and valuation made by it in relation to such property. That the State Board has such jurisdiction and right we think there can be no doubt.* * * *

"The statute, when viewed in the light of the construction we have placed upon it, and to which it is clearly entitled, provides for the assessment of property other than 'railroad track'

plainly was this the law that we felt that it needed no construction; so plainly was this the law that appellant, and all the appellants in like cases now before this court from Indiana, actually *did* appear before the Board, demanded, and were accorded, a hearing. But even had there been a doubt as to the *right* to a hearing under the law, the Supreme Court of Indiana has said that such right exists, and its construction, as to the rights which the law gives, *is the law*.

So familiar a rule needs little comment. The State court's opinion simply declares what the law really is, what it really *means*, what rights it actually gives. It is upon the statute, so construed, that this court must pass. Had our State Supreme Court said that this statute gave no notice, no hearing, no opportunity to be heard, we would have been bound by it. The converse is true. The Supreme Court of Indiana has said that notice *is* provided, that an opportunity to be heard *is* afforded as a *right* under the law—a right which no power can deny to any owner, operator or constructor of railroads in Indiana. They make their sworn statements to the Auditor of State to be laid before the board; they know when and where the board holds its sessions; those sessions are open, not secret; they have a *right* to appear before the commissioners and demand to be heard in vindication of their statement and their valuation; and, having demanded such hearing, the assessment of the board would be utterly void, should such hearing be denied. They have

a *right* to demand to be informed of the assessment and to be heard respecting its correctness; if they fail to ask for such information, it is not the fault of the law. This is the law which is here attacked, as declared by the Supreme Court of Indiana, and as thus declared, this is the law now before this court. In numerous cases this court has repeatedly decided this.

"If we had any doubt of the correctness of these views we should accept the interpretation which the highest court of the State places upon the statute. Where the inquiry is whether a State enactment under which property is proposed to be taken for a public purpose, accords full opportunity to the owner at some stage of the proceedings involving his property, to be heard as to their regularity or validity, *we must assume that the inferior courts and tribunals of the State will give effect to such enactments as interpreted by the highest court of that State.*"

Palmer v. *McMahon*, 133 U. S. 665.

"As the whole matter, then, concerns the validity of the State law as affected by the Constitution of the State, that question, and the other one of *the true construction of that statute*, belongs to a class of questions in regard to which this court still holds, with some few exceptions, that the decision of the State courts are to be accepted as the rule of decision for the Federal Courts."

State Railroad Tax Cases, 92 U. S. on p. 618.

"It has been held by this court that *the decisions of the highest courts of the State in regard to the validity or meaning of the Constitution of that State, or its statutes, are to be considered as the law of that State, within the requirements of this section* In *Leffingwell* v. *Warren*, 2 Black. 599, this court said, in regard to the statutes of limitations of a State, that the construction given to a statute of a State by the highest tribunal of such State, is REGARDED AS A PART OF THE STATUTE, AND IS AS BINDING UPON THE COURTS OF THE UNITED STATES AS THE TEXT."

Bucher v. *Railway Co.*, 125 U. S. on p. 582.

"This doctrine applies as well to the construction of a provision of the organic law, as to the construction of a statute. The construction of a statute or constitution by the highest court of a State, so far as contract obligations incurred under it are concerned, CONSTITUTES A PART OF THE LAW AS MUCH AS IF EMBODIED IN IT. *So far does this doctrine extend, that when a statute of two States, expressed in the same terms, is construed differently by the highest courts,* THEY ARE TREATED BY US AS DIFFERENT LAWS, EACH EMBODYING THE PARTICULAR CONSTRUCTION OF ITS OWN STATE, and enforced in accordance with it in all cases arising under it."

Louisiana v. *Pilsbury*, 105 U. S. 294.

In the Kentucky Railroad Tax Cases, 115 U. S. on p. 334, precisely this point was decided:

"It is said, however, in answer to this, by counsel for plaintiff in error, in argument, that whatever was in fact this alleged hearing, it could only have been accorded as a matter of grace and favor, because it was not demandable, as of right, under the law, and consequently has no such legal value as attaches to a hearing to which the law gives a right, and to which it compels the attention of the officer, under an imperative obligation, with the sense of official responsibility for impartial and right decision, which is imputed to the discharge of official duty."

"*But such is not the construction put upon the statute, as we have seen, by the Court of Appeals of the State*, nor the practical construction, as we infer from the averments of the pleadings, put upon it by the officers called to act under it. And if the plaintiffs in error have the constitutional right to such hearing, for which they contend, the statute is properly to be construed so as to recognize and respect it, and not to deny it. The Constitution and the statute will be construed together as one law. This was the principal of construction applied by this Court, following the decisions of the State Court in *Neal* v. *Delaware*, 103 U. S. 370, where words, denying the right, were regarded as stricken out of the State Constitution and statutes, by the controlling lauguage of the Constitution of the United States;

and in the case of *Cooper* v. *The Wandsworth Board of Works*, 14 C. B. N. S. 180, in a case where a hearing was deemed essential, it was said by Byles, J., that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature."

Kentucky Railroad Tax Cases, 115 U. S. 334.

"The construction uniformly given to the Constitution of a State by its highest court is binding upon the courts of the United States as a rule of decision."

Post v. *Supervisors*, 105 U. S. on p. 669.

Railway Co. v. *Georgia*, 98 U. S. 359.

On principle and authority, it is clear that the law, as construed by the highest tribunal of the State, *is the law*. And it is this which is now before this Court.

III

THE LAW, AS PRACTICALLY CONSTRUED BY THE RAILROADS.

The construction given the law by the Supreme Court of Indiana, was the same construction which appellant, and all appellants in these cases, acted upon long before an attack upon the law was ever thought of, long before this action was brought to overthrow it, long before the Supreme Court of the State was asked to authoritatively construe it.

Appellants did not, originally, believe that this law provided no notice or denied them a hearing. They furnished their sworn statements as by law

required; they took notice of the time and place of meeting of the State Board of Tax Commissioners; they took notice that the Board would act upon their return; they appeared, by their chosen representative, before the Board, asked a hearing, were granted a hearing, *and were heard*; they made as ample statement as they desired, "bearing upon the valuation and assessment for taxation of their 'railroad track' and 'rolling stock,'" covering "not only facts in addition to those stated in the annual return for 1891, made to the Auditor of State as required by law, which was then in the hands of the State Board of Tax Commissioners, *but also facts in explanation and correction of said return.*" Record, p. 145.

We do not, of course, maintain that they are bound by this practical construction which they placed upon the law, before they called upon the courts to construe it differently. But we call attention to the fact, that they, themselves, did not believe that the law provided for no notice and no hearing; they acted upon that belief, and as a matter of fact *were actually heard.*

These facts throw a powerful light upon the attitude of appellants before this court. Here is a law whose provisions are plain, as to notice and hearing; here are appellants so construing the law themselves and acting upon it; here is the Supreme Court of the State construing the law to give, *as a matter of* RIGHT, the hearing which the railroads asked and received; and, yet, here are these appellants before

this court assailing the law as construed by themselves, as acted upon by themselves, and as construed by the Supreme Court upon their suit, brought solely because the Board did not accept their views as to the value of their property.

As thus construed and as it actually is, the law provides:

1. That owners of all other property except "railroad track" and "rolling stock" are originally assessed by the local taxing authorities, have an opportunity to be heard in defense of their rights and a final *appeal* to the supreme taxing tribunal of the State, the State Board of Tax Commissioners.

2. The owners of "railroad track" and "rolling stock" are *originally* and finally assessed by this supreme taxing tribunal to whom they are required to make voluminous sworn returns long before its meeting, of whose time, place and purpose of meeting, they are notified by the law itself and before whom they have the right to make complaints, and to be heard in defense of their rights and the vindication of their sworn returns.

The only substantial difference between the rights accorded owners of "railroad track" and "rolling stock" and the owners of all other property, is thus seen to be *merely the right of appeal* from the judgment of an inferior taxing tribunal to the judgment of a superior tribunal, *before whom the railroad owners already are in the beginning.*

IV.

APPELLANT'S GROUNDS OF ATTACK.

Appellant attacks this law and the assessment made thereunder, upon the following grounds:

1. The law violates the Fourteenth Amendment to the Constitution of the United States by taking appellant's property, in the form of a tax, without due process of law.

2. It violates said amendment by denying to the railroad owners, operators and constructors, the equal protection of the laws, granted to all other property owners in Indiana.

3. It violates the interstate commerce clause of the Federal Constitution, by abridging interstate commerce and taxing the instruments and fruits thereof.

4. The Board, in fact, assessed appellant's property with an evil eye and unequal hand; it denied, in fact, the equal protection of the laws; and it, in fact, taxed the fruits and instruments of interstate commerce.

We shall discuss these propositions in their order. At this point, we repeat that we shall not discuss matters, not before this court. Appellant's extraordinarily voluminous brief is full of discussion of the rulings of the trial court, of the weight of the evidence, of the correctness of construction of the law by the State Supreme Court, of the

correctness of the appraisement by the State Board of Tax Commissioners of appellant's "railroad track" and "rolling stock," and especially of *mere statements by counsel, as if such statements were evidence in the record.* All this is irrelevant and merely burdens the court, involves the otherwise clear course of the argument, and beclouds the real and the only questions under discussion. We could show how erroneous and untrue all this is, but we will not so presume upon the court's patience and indulgence. Instead, we shall confine ourselves to the questions before the court.

ARGUMENT.

I.

DUE PROCESS OF LAW.

It is said that the Indiana tax law of 1891 does not provide "due process of law" as to the valuation and assessment of "railroad track" and "rolling stock," because:

1. Said law provides for the giving of no notice, to the owners of such property, of the assessment thereof; and

2. It provides for no hearing of the owners of such property concerning the assessment of their property, and, in effect, actually denies them a hearing, or any opportunity whatever to be heard.

Notice and hearing are so intimately blended that both may profitably be discussed together.

II.

1. It is conceded, of course, that the Fourteenth Amendment covers corporations as well as natural persons, and that taxation is a form of deprivation of property; and, therefore, that a corporation is entitled to due process of law when deprived of its property by taxation.

What is "due process of law?" And does the Indiana tax law of 1891 deny "due process of law" to appellants and their like?

2. The phrase "due process of law" is flexible. It does not mean the same thing in every case. It was inserted in *Magna Charta* as a check upon royal caprice, as a regulation of arbitrary power which deprived subjects of property, liberty and life, secretly and without warning, ruthlessly and without hearing, arbitrarily and without cause. But neither then nor now does it mean that the same procedure is necessary in all cases. It could not mean that, without destroying justice and government.

Accordingly, all civilized governments recognize various remedies, rights and obligations, and many different modes of applying them. In many, in most, perhaps, "due process of law" means formation of definite issues by pleading, exhaustive examination of witnesses, argument, judgment and appeal. And in these classes of cases, anything short of this exhaustive process, would not be "due process of law." In other cases, as in the law of

eminent domain, where the taking of property is for a use, partly private, partly public, the notice is briefer, the hearing less full, the appeal more restricted; and yet the procedure is no less "due process of law." In time of war, pestilence, or other great public danger, the procedure is narrowed until notice and hearing become rudimentary. Whenever the public interest demands it, or the life of the government depends upon speedy determination, summary action is as fully "due process of law," as the slow and cumbersome procedure of ordinary litigation, provided, only, that it be applicable to the case and provides for some sort of notice and hearing.

Taxation is a necessity of government; the revenues must be forthcoming. And while the tax-payer must have a hearing, an opportunity to demonstrate the proportion of the public burdens he shall bear as determined by the value of his taxables, the whole procedure must be marked with expedition. The experience of the world has proved that the life of governments depends upon methods of taxation which should be definite and summary.

It would be absolutely impossible to give every tax-payer a hearing such as the litigants in our courts of justice have, such as the indicted criminal has, or such, even, as the person whose property is condemned under the right of eminent domain has. If so, there would be an end of taxation and an end of government. In the matter of taxation, therefore, such a proceeding as is

vindicate his statement and demonstrate the correctness of his estimates; this is *hearing*. All this, as a matter of fact, appellants had,—preliminary hearing, notice and final hearing. All this *they could have compelled*. It was and is a *right* given by the law, not a favor granted by the Board.

The railroads complain that they were not informed of the amount of the assessment. They did not ask for such information. They might have demanded it, but they failed to do so. Their neglect is not chargeable to the law or the Board. They presented their written statement; they appeared before the Board and were heard in explanation and correction of said statement; they might then have demanded to be informed when the assessment should be made, of the amount thereof, so as to have objected thereto, had they desired, and this the Board neither could nor would have refused them; *but they did not do so*, and, having already been heard as fully as they desired, the Board could not know that they desired further hearing, unless they asked for it—the Board could not but infer that they had already been heard as fully as possible, and that, whatever the assessment, they had nothing more to say.

Is this "due process of law?" The words of Mr. Justice Miller fit the question like a glove:

"This board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of any one before it to assert a right or redress a wrong; and, in the

business of assessing taxes, *this is all that can reasonably be asked.*"

State Railroad Tax Cases, 92 U. S., on p. 610.

And this was said of a law, the duplicate of our own, so far as notice and hearing—so far as "due process of law"—is concerned, except that, in addition to its provisions, *our law expressly provides for "hearing complaints."*

4. Precisely the procedure required by the Indiana Taw Law of owners, operators and constructors of railroads respecting the valuation and assessment of their "railroad track" and "rolling stock" is, by the same law, required of the owners of mining property, except that the latter is before the County Board of Review and the former before the State Board of Tax Commissioners. The mine owner must make his preliminary statement in writing; the law notifies him when and where the Board meets, the length of its sitting, and that it will then and there pass upon his statement; he may appear, if he desires, and make additional statements, or, in any way he can, demonstrate the correctness of his own valuation. In *Hyland* v. *Brazil Block Coal Company*, 128 Ind. 335, this procedure was assailed as being a denial of "due process of law," and the Supreme Court of Indiana said, upon this exact point, on p. 340:

"If, however, notice is provided, and it is of such a character as to inform the tax-payer that his lists will be revised, and to give him a reasonable opportunity to be heard, the constitutional requirement is met.

"We think there was such notice in this case. The time for the meeting of the board is fixed by law, so that all interested must take notice. The duties of the board are, also, fixed by law, so that all are bound to know what those duties are. It is evident that the appellee could not be ignorant of the fact that its property would be valued and assessed by the Board of Equalization, for a public law made it the duty of the appellee to furnish a statement for consideration by the board, and also made it the duty of the board to make the assessment.

"The case is entirely unlike that of an individual tax-payer, for he can not know that the board will take any action upon his list, whereas the corporation knows, as a matter of law, that the board will act upon its statement, since that is the principal purpose for which the sworn statement is required. It is manifest that neither the principle decided in *Kuntz* v. *Sumption*, *supra*, nor the line of reasoning there pursued, is relevant to the question here presented. As the statement furnished by the corporation presents the matter to the board for action, and the corporation knows that the board must act upon it, there is no valid reason for asserting that there was no notice."

This was said by the same Court and through the same Justice who delivered the opinion in *Kuntz* v. *Sumption*, and with express reference to that case, so vigorously and repeatedly quoted by appellant in this Court. It relieves us of the necessity and suggests, indeed, the impropriety of giving any space to *Kuntz* v. *Sumption*, a case which the Court that rendered the opinion, and the Judge who pronounced it, have so lucidly differentiated and distinguished from such cases as the one at bar.

This opinion the same Court is reiterated with emphasis, and detailed particularly, in *Smith, Treasurer*, v. *Rude Bros. Mnfg. Co.*, 13 Ind. 150:

5. Nor are we left to the State courts to maintain a position so manifestly sound in principle. This court has passed upon the same procedure of valuing and assessing the property of railroads. We refer to the procedure approved by this court in the Kentucky Railroad Tax Cases, 115 U. S. 331. Indeed, the Kentucky law did not, in express terms, provide for any hearing at all. It merely required preliminary statement as our law does; it fixed the time, place, purpose and duration of the State Board's sessions, as our law does; it provided that then and there the State Board should pass upon those statements, and value and assess the railroad's property as our law does; but it said nothing about the board's hearing complaints, as our law does: nothing about correcting the judgments to which the board is tending, upon due cause shown, as our law does. And yet this court held that the Kentucky tax law gave ample notice and full opportunity to be heard, and this, too, *without reference to the further provision of that law that the assessments of the State Board could be enforced only by suit in the courts.* On pages 332, 333 334, Mr. Justice Matthews pronouncing the unanimous opinion of the court, said:

"*In the proceedings questioned in these cases, there was, in fact, and in law, notice and hearing.*

"The railroad company, by its president or chief officer, is required by law, at a specified time, to return to the auditor of public accounts, under oath, a statement showing 'the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State,

and in each county, city and incorporate town therein, together with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, including engines and cars, and a list of the depot grounds and improvements, and other real estate of the said company, and the value thereof, and the respective counties, cities and incorporated towns in which the same are located. That, if any of said railroad companies owns or operates a railroad or railroads out of this State, but in connection with its road in this State, the president or chief officer of such company shall only be required to return such proportion of the entire value of all its rolling stock as the number of miles of its railroad in this State bears to the whole number of miles operated by said company in and out of this State.'

"This return, made by the corporation through its officers, *is the statement of its own case*, in all the particulars that enter into the question of the value of its taxable property, and may be verified and fortified by such explanations and proofs as it may see fit to insert. It is laid by the auditor of public accounts before the Board of Railroad Commissioners, and constitutes the matter on which they are to act. They are required to meet for that purpose on the first day of September in each year, at the office of the auditor, at the seat of government, when these returns are to be submitted to them. The statute declares that 'should the valuations be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said board shall keep a record of their proceedings, to be signed by each member present at any meeting; and the said board is hereby authorized to examine the books and property of any railroad company to ascertain the value of its property, or to have them examined by any suitable disinterested person, to be appointed by them for that purpose.' And in the performance of these duties, their sessions are limited to a period of not longer than twenty days in any one year.

"These meetings are public, and not secret. The time and place for holding them are fixed by law. The proceedings of the board are required to be made matter of record, and authenticated by the signature of the quorum present. Any one interested has the right to be present. In reference to

this point, the Court of Appeals of Kentucky, in its decision in these cases, says (81 Ky. 492–512): 'As we construe this act, although in the nature of an original assessment, the parties had the right to be heard, and were, in fact, heard before the board passing on the question of valuation.' It is averred, in the petitions filed in these actions, that 'defendant did appear before said board by its officers, agents and attorneys, and presented such facts, figures, and information and argument in relation to the valuation and assessment for taxation of its said property, as it saw proper to;' and 'that said board, after a full hearing of defendant by her officers, agents and attorneys, and a full consideration of said returns, reports, information and arguments before them, valued and assessed for taxation,' the defendant's line of railroad, etc. These averments are not denied, but stand confessed in the record of each case.

"It is said, however, in answer to this, by counsel for plaintiffs in error, in argument, that whatever was in fact this alleged hearing, it could only have been accorded as a matter of grace and favor, because it was not demandable, as of right, under the law, and consequently has no such legal value as attaches to a hearing to which the law gives a right, and to which it compels the attention of the officer, under an imperative obligation, with the sense of official responsibility for impartial and right decision which is imputed to the discharge of official duty. But such is not the construction put upon the statute, as we have seen, by the Court of Appeals of the State, nor the practical construction, as we infer from the averments of the pleadings, put upon it by the officers called to act under it. And if the plaintiffs in error have the constitutional right to such hearing, for which they contend, the statute is properly to be construed so as to recognize and respect it, and not to deny it. The Constitution and the statute will be construed together as one law. This was the principle of construction applied by this court, following the decisions of the State Court in *Neal* v. *Delaware*, 103 U. S. 370, where words, denying the right, were regarded as stricken out of the State Constitution and statutes by the controlling language of the Constitution of the United States; and

in the case of *Cooper* v. *The Wandsworth Board of Works*, 14 C. B. N. S. 180, in a case where a hearing was deemed essential, it was said by Byles, J., 'that although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature.'

"It is still urged, however, that there is, notwithstanding what has been said, no security that the final action of the Board of Railroad Commissioners, in valuing and assessing railroad property under this statute, may not be unequal, unjust and oppressive, and that either by error of judgment, through caprice, prejudice, or even from an intention to oppress, valuations may be made which are excessive, bearing no reasonable relation to what is fair and just and fixed arbitrarily, based neither upon actual evidence nor honest estimate. But the same suppositions may be indulged in, in opposition to all contrary presumptions, with reference to the final action of any tribunal appointed to determine the matter, however carefully constituted and however carefully guarded in its procedure, and whether judicial or administrative. Such possibilities are but the necessary imperfections of all human institutions, and do not admit of remedy; at least no revisory power to prevent or redress them enters into the judicial system, for, by the supposition, its administration is itself subject to the same imperfections."

And of this procedure Mr. Justice Matthews said, on p. 338:

"*We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law.*"

And this without reference to the provision for the enforcement of the assessment in the courts.

"*The* MODE OF VALUING *railroad property under this* (the Kentucky) *statute is due process of law.*"

How, then, can appellants be patiently heard to say that a mode of valuation, giving all the safeguards given by the Kentucky law, and, in addition, *expressly providing for "hearing complaints"* and change of judgment "upon due cause shown," or upon the Board's "own motion," is not due process of law? And all this the Indiana tax law provides.

6. The Illinois tax law, heretofore referred to briefly, as respects the provision for due process of law, is less exact and explicit in providing for notice and hearing than the Indiana tax law. Secs. 104 and 109 and secs. 40 to 50, inclusive, as given in State R. R. Tax Cases, 92 U. S., on pp. 579 and 582, inclusive, and 584–5; and secs. 77 to 87, inclusive, and 129, 137 and 139, Indiana Tax Law of 1891.

Yet the Illinois tax law, assailed upon this very ground, was approved by this Court in language whose brevity and terseness increased its curt and pronounced emphasis. In *State Railroad Tax Cases*, 92 U. S. on p. 609, this Court, by Mr. Justice Miller, said:

"There is, however, an objection urged to the conduct of the Board of Equalization, resting on the action of the Board in these particular cases, in which they are charged with a gross violation of the law to the prejudice of the corporations, which we will consider. The statute requires the proper officers of the railroad companies to furnish to the State Auditor a schedule of the various elements already mentioned as necessary in applying the statutory rule of valuation. It is charged that the Board of Equalization increased the estimates of value so reported to the Auditor, without notice to the companies, and without sufficient

Arose under the same law, are logically the same opinion, and may profitably be discussed together.

We freely concede that Mr. Justice Field, in the San Mateo case, uses language which seems to support appellants' contention; but this is in seeming, merely, and entirely disappears when taken as a part of one connected, logical and powerful opinion, and as applied to the particular case and law then before the Court. And it is only by taking this language out of its appropriate place and relation, and using it as an abstract utterance, that appellants are able to extract from it the faintest aid and comfort.

(*a*) The California law, which the San Mateo and Santa Clara cases decided not to be "due process of law," provided the following procedure: (1) That the State Board of Equalization shall hold "regular meetings at the State capital on the second Monday in each month, and such special meetings as the chairman may direct:" (2) that on or before the first Monday of April the officers of the railroad companies shall furnish the Board statements of certain facts designed to enlighten the Board on the property to be assessed; and (3) that annually, *on or before* the first Monday in May the Board should assess certain property of all railroads operated in more than one county.

At *any time* on or before the first Monday in May of each year, the valuation might be made.

It might be made at a regular session or *special* session. It might be made openly or secretly. No definite or exclusive time for meeting; no exact and limited session, when the companies might know their property would be assessed; no opportunity for hearing, by inference, even; no express right to make or power to hear complaints. No wonder Mr. Justice Fields smote down such a law with all the force of the Constitution. We heartily endorse the language addressed to this law:

"The law directing the proceeding must provide for some kind of notice, and offer to the owner an opportunity to be heard, or the proceeding will want the essential ingredient of due process of law."

San Mateo Case, 13 Fed. Rep. 752.

And in the Santa Clara case the same distinguished Judge explained more minutely what he meant, in answer to certain inexcusable misconceptions of his language in the San Mateo case:

"The notice to which we refer need not be a personal citation; it is sufficient if it be given by a law designating the time and place where parties may contest the justice of the valuation. As a general rule, only a statutory notice is given. The State may designate the kind of notice and the manner in which it shall be given. All that we assert, or have asserted, is that there must be notice of some kind which will call the attention of the parties to the subject, and inform them when and where they will be permitted to expose any alleged wrong in the valuation of which they may complain."

Santa Clara Case, 18 Fed. Rep., 410.

(*b*) The law now before this Court is not obnoxious to this definition. It expressly gives the

Board the *power* "to hear complaints," and, by necessary inference, of course the railroads the *right* to make them. The distinction between the California law which was overthrown in the San Mateo and Santa Clara cases and the law whose validity is now questioned before this Court, is made strikingly apparent by presenting their provisions in parallel:

COMPARISON OF CALIFORNIA TAX LAW OF 1880 AND INDIANA TAX LAW OF 1891.

CALIFORNIA.	INDIANA.
Reference being made to Vol. III, (Supplement) of Hittel's Codes and Statutes of California, 1877–1880.	Reference being made to the various sections of the Indiana Tax Law of 1891.
(*a.*) On or before the first Monday of April, in each year, the proper officers of any railroad operated in more than one county, shall furnish the Board a sworn statement showing in detail for the year ending on the first Monday in March: (1) the number of miles and value per mile, (2) all property whatever within the State, (3) detailed schedule of all rolling stock, (4) annual gross earning, etc., etc.	(*a*) Between April 1 and June 1, of each year, the owner, operator, or constructor, shall furnish the State Auditor, for the use of the Board, a sworn statement (1) of all property denominated "railroad track," and (2) "rolling stock," (3) facts showing condition of the "railroad track," (4) a schedule of capital stock paid up and authorized, the market or actual value of the same, the total indebtedness, except for operating expenses, the total listed valuation of all its property in the State.
Sec. 3664.	Secs. 83 and 85.

(*b.*) The Board shall hold "regular meetings at the State Capitol on the second Monday of each month, and *such special meetings as the Chairman may direct.*" It shall hold a continuous session from the third Monday in August to the third Monday in September, for *special purposes*, among which the assessment of railroad property is not mentioned. Sec. 3692, clauses 4, 8 and 9.	(*b.*) The Board "shall annually convene in the office of the Auditor of State, on the first Monday of August each year, *for the purpose of assessing railroad property,*" etc., and remain in session not longer than forty days. No special meetings are permitted. Sec. 129; p. 254, sec. 132.
(*c.*) The Board shall "annually assess the franchise, roadway, road-bed, rails and rolling stock of all railroads operated in more than one county in the State at their actual value." Sec. 3692, clause 5.	(*c.*) The Board at this session shall assess "at its true cash value," all "railroad track" and "rolling stock," etc. Sec. 137.
(*d.*) NO PROVISION *for notice hearing of any kind, by inference or in express terms, is made in the California law.* Under it notice and hearing are practically impossible.	(*d.*) The Board is "*given all the powers given to County Boards of Review.*" Among these powers, which are voluminous, is "*the power to hear complaints,*" and the Board may "*on sufficient cause being shown, or on its own motion, correct the assessment or valuation of any property,*" etc. Secs. 114 and 129.

This distinction, as to notice and hearing, between the two laws, shows how entirely foreign to

the Indiana Tax law of 1891, is the language of the court directed to the California Tax law of 1880.

The Santa Clara case was appealed to the Supreme Court of the United States. Mr. Saunders, Mr. William M. Evarts, and Mr. George F. Edmunds represented the railroad companies. These distinguished counsel made the following objections to the assessment:

(1) That the railroads were instruments of the United States Government, and therefore not taxable by the State;

(2) That the assessment was made under the law which denied railroad companies the equal protection of the laws;

(3) That the amendment to sections 3664–5 of the Political Code made in 1881 was not constitutionally enacted;

(4) As a matter of fact, no valid assessment was made by the State Board;

(5) No interest could be recovered;

(6) As a matter of fact, the Board had exceeded its authority by assessing the fences along the right of way.

The question of the denial of due process of law was not mentioned. Apparently the decisions of the Supreme Court of the United States in the Railroad Tax Cases in 92 and 115 U. S., had convinced the minds of these eminent and alert lawyers that contention upon this point would be time wasted.

This Court affirmed the judgment of the Court below *solely on the ground that the State Board of*

Equalization had assessed fences along the railroad company's right of way, the assessment of this amount being indistinguishably mingled with the entire assessment. The whole tax was, on this single ground, declared void.

In *Davidson* v. *New Orleans*, 96 U. S. 97, there was, before the making of the assessment, no notice, no hearing, no opportunity for presentation of facts by the property owner. Of course this is not "due process of law;" but because, "before the assessment could be collected, or become effectual, the statute required that the tableau of assessments should be filed in the proper District Court of the State," with notice and opportunity for hearing thereon before the collection of the same, it was held due process. But it was not intimated that this hearing in Court was necessary to due process of law. Had there been notice of the time and place of assessment, a statement from the property owner required to be laid before the assessing officers, an opportunity afforded the property owner to appear before them in vindication of his statement, there would have been due process of law.

In *Hagar* v. *Reclamation District*, 111 U. S. 701, the tax was to be assessed by three commissioners who viewed and assessed each acre of land to be reclaimed, without notice, hearing or any communication whatever with the owner. The property was simply to be assessed and the list of amounts due from owners was to be placed in the hands of the County Treasurer for collection. If

the owner did not pay the Treasurer in thirty days, he was to be sued for the amount by the district attorney. The first information the owner has that he has been assessed at all or of the amount of the assessment, is when the county treasurer demands payment. But when the action was brought to collect the tax, the owner could resist. Summary as this proceeding was, this court held that the final opportunity to resist when sued, gave the owner sufficient hearing to constitute due process of law.

In *Garvin* v. *Daussman*, 114 Ind. 429, like the above cases, no notice, hearing or any communication whatever with the property owner is provided. The first he knows of the assessment is the demand for its payment; but payment can only be enforced by an action at law, and this is held to satisfy the constitutional requirement of "due process of law."

(*c*) And yet because, in this line of cases a hearing in court is finally possible before the collection of the tax can be enforced, it is assumed that some such proceeding is, in all cases, necessary to constitute due process of law, the fact being entirely ignored that in these cases there was, before the action to collect the taxes, no notice, hearing or any communication whatever with the property owner, *and this being the sole reason why the Court at all referred to the owner's final opportunity to resist the tax in the courts, as meeting the requirement of due process of law.*

To recapitulate the discussion of this proposition:

I. Due process of law is a flexible, variable term, and means different things in different cases; but it always involves notice and hearing.

II. Taxation is necessarily swift and summary in its methods. The necessity of the government demands briefer notice and more limited hearing in the assessment and collection of the public revenues than in any other form of the taking of property.

III. Notice of the time, place, purpose and duration of the session of the taxing authorities who are to pass upon the property of any class, a statement from the owner made before this session convenes, concerning the value of the property, an opportunity to appear before the authorities and demonstrate the correctness of his statement, is "due process of law" in the assessment of taxes.

II.

THE EQUAL PROTECTION OF THE LAWS.

"EQUAL PROTECTION OF THE LAWS EXISTS WHENEVER, UNDER LIKE CONDITIONS, EVERY PERSON IS SECURED IN THE ENJOYMENT OF THE SAME RIGHTS BY THE LAW."

Judge Baker in *McKean* v. *Archer*, 52 Fed. Rep. 795.

It is charged that the law, as a matter of law, denies owners, operators and constructors of railroads the equal protection of the laws guaranteed

by the Fourteenth Amendment to the Constitution of the United States; because

1. The owners of all other property are within the jurisdiction of the local township or county taxing officers, from whose decision they have at least one *appeal* to the State Board of Tax Commissioners: whereas, the owners, operators and constructors of railroads are *originally* and finally assessed by this highest body of taxing officers. This right of the jurisdiction of the local authorities, and particularly the right of appeal from their decision to the State Board of Tax Commissioners, are said to be valuable rights, and they are granted to all save owners, operators and constructors of railroads, and to them denied.

2. The owners, operators and constructors of railroads are subjected to an unequal mode of valuation and assessment by which values outside of Indiana are imported into and taxed in Indiana.

3. The State Board of Tax Commissioners, as a matter of fact, valued and assessed the "railroad track" and "rolling stock" with an evil eye and an unequal hand, by importing into Indiana and attributing to the property of railroads within that State, values belonging and existing wholly outside of Indiana, and not subject to taxation within its borders.

What is "equal protection of the laws?"

To answer this question, it becomes necessary to construe section 1, of the Fourteenth Amendment.

Is the difference in the method of assessment of railroad property and the methods of assessment of all other property a denial to the owner of the equal protection of the laws?

Does the Fourteenth Amendment contemplate the granting of the same identical rights to all persons of whatever class or condition?

Does it inhibit distinctions being made between classes of persons or property and the application of one method of procedure in taxation to one class under peculiar conditions, and the denial of that procedure to every other class, not under those peculiar conditions?

1. While it is conceded that this amendment applies to corporations as well as individuals, still this is true only by construction, and not by the historical origin of the amendment nor of the principles there crystallized. Its force when applied to corporations attempting to escape public taxation, is, therefore, not so great as if this had been its historical purpose; and since it applies to corporations only by implication, it follows that the violation of their rights, by alleged discrimination against them, must be strikingly and undeniably clear. Therefore a discussion of the origin of the amendment and its principles is proper at this point.

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1. The owners of all other property are within the jurisdiction of the local township or county taxing officers, from whose decision they have at least one *appeal* to the State Board of Tax Commissioners; whereas, the owners, operators and constructors of railroads are *originally* and finally assessed by this highest body of taxing officers. This right of the jurisdiction of the local authorities, and particularly the right of appeal from their decision to the State Board of Tax Commissioners; are said to be valuable rights, and they are granted to all save owners, operators and constructors of railroads, and to them denied.

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Does the Fourteenth Amendment contemplate the granting of the same identical rights to all persons of whatever class or condition?

Does it inhibit distinctions being made between classes of persons or property and the application of one method of procedure in taxation to one class under peculiar conditions, and the denial of that procedure to every other class, not under those peculiar conditions?

1. While it is conceded that this amendment applies to corporations as well as individuals, still this is true only by construction, and not by the historical origin of the amendment nor of the principles there crystallized. Its force when applied to corporations attempting to escape public taxation, is, therefore, not so great as if this had been its historical purpose; and since it applies to corporations only by implication, it follows that the violation of their rights, by alleged discrimination against them, must be strikingly and undeniably clear. Therefore a discussion of the origin of the amendment and its principles is proper at this point.

2. The Fourteenth Amendment is an historical amendment. In construing it, the old and fundamental rule of construction laid down by Blackstone, that the evil to be remedied should be considered in determining what the lawmaker meant, is the safest guide.

"A very useful key to the construction of a statute or a constitution is to inquire what was the evil to be removed and what remedy did the new instrument propose; so that when any question arises requiring a judicial construction of any of its clauses, it is important to go back and ascertain the evil that was intended to be remedied."

Miller on the Constitution, p. 82.

Applying this rule to the Fourteenth Amendment reveals the fact that its application to cases like the present was never contemplated, and that an absolute identity in rights and privileges granted classes of citizens under different conditions and circumstances was never intended by the formulators of that amendment, and is not embraced within its scope.

3. The principles, formulated in the first section of the Fourteenth Amendment, are as old as *Magna Charta*. The evils they were originally intended to remedy, was the denial, by regal power, of purely personal rights and personal, individual liberties. Thereafter no Englishman was to be thrown in prison, his life taken, or his property wrested from him by any arbitrary act of any king, however great or powerful; but only for cause, through the formal, customary, orderly and regular judicial proceedings. They were designed to

end the exercise of capricious and arbitrary power. They were purely and exclusively personal and individual guarantees, and nothing more. They meant that thereafter the public burdens should not be laid upon, nor public favors granted to one man, without, under the same circumstances, laying those burdens upon, or granting those public favors to all men.

4. While this was the purpose of these principles, as expressed in *Magna Charta*, the purpose of their insertion in the first section of the Fourteenth Amendment was to meet the exigencies and solve the problems arising from the peculiar state of society existing immediately after the war. The evils which the adoption of the Fourteenth Amendment was designed to remedy, were the evils growing out of the reconstruction and the investment with citizenship, of a race of slaves. The whole amendment is devoted to citizenship and questions of public debt, growing out of the war.

The slaves had been freed. They were to be made citizens. The first sentence of the first section of the Fourteenth Amendment does this.

Made citizens, it became necessary to prevent the former masters from abridging the privileges and immunities of their former slaves. The second sentence of the first section of the Fourteenth Amendment does this.

To prevent the enactment of State laws authorizing the spoilation of their property, restraint of their liberty, destruction of their lives and general reduction to their former state, it was provided

that no property should be taken, and no life nor liberty interfered with, unless in open court, for cause, after full hearing and trial—in short, unless done according to the forms and "due process of law." The third clause of the first section of the Fourteenth Amendment does this.

Finally and mainly, to prevent in the broadest way, discrimination against the late slaves it became necessary to provide, expressly, that no statute should deny to any citizen the equal protection of the laws. The fourth and last sentence of the first section of the Fourteenth Amendment does this.

5. Thus it is clear that the thought in the mind of the people, in adopting the Fourteenth Amendment, was to preserve purely, individual rights, consequent upon the reorganization of society, following the war. The people never had in their minds the idea that there should be an absolute uniformity in the classification of rights, remedies, property or citizens, by which alone civilized society can exist. They never thought of preserving corporations from taxation, because taxed in a class by themselves and in a manner applicable to them alone. The thought of taxation of corporations, or of any general uniformity in rights, remedies, persons or property was not in their minds at all. But the sole thought was to cure and prevent the tremendous evils resulting from re-establishing society, conferring upon a race the blessings and burdens of citizenship, and protecting them from

the bitterness, the jealousy and the hatred of the superior and dominant class, recently their masters.

6. Therefore, in the light of history, anything else covered by the Fourteenth Amendment, must be held to be covered by mere force of the language of the amendment, by force of pure construction, and not by force of its history and the problems which the people intended it to solve when they adopted it. Applying the rule of interpretation laid down by every constitutional writer from Blackstone to Miller, and considering the evils designed to be remedied, all questions of the kind now before the Court are not within the scope of the Fourteenth Amendment. If it can be made to protect railroad companies from being denied methods of procedure, granted to the owners of other kinds of property, and from being taxed in a class by themselves according to a method applicable to them alone, such protection can only come from pure construction alone—from an exten sion of the Fourteenth Amendment to cover such cases as this, because of the sheer force of the language it employs.

While we concede, of course, that it does cover corporations and taxation, still we insist that the alleged denial of equal protection of the laws in the assessment of their property, must be more striking, self-evident and flagrant than would be required, had the historical origin of the amendment been directly aimed at this particular subject.

Remembering that any protection from taxation, given to corporations by the Fourteenth Amendment, must be purely by construction, we come to an examination of that clause invoked to overthrow the tax law of Indiana, providing for the assessment and valuation of railroad property, viz.:

"No State shall deny to any person within its jurisdiction the equal protection of the laws."

The railroad companies contend that they are discriminated against, within the meaning of this constitutional safeguard, because:

(*a.*) They are *originally* assessed by the *supreme* taxing tribunal of the State, without right of appeal from its judgment, whereas all other citizens are assessed by the *local* taxing authorities, from whose decision an *appeal* lies to the judgment of the supreme taxing tribunal; and,

(*b.*) They are subjected to a mode of valuation which results in the taxation in Indiana of property and values located wholly outside of Indiana.

7. Government is a practical thing. It is necessary to provide different classes of remedies for different classes of wrongs; to provide different rules for persons living under one set of conditions from those living under another set of conditions. In short, government is possible only by taking into consideration the differences which inhere in the nature of property and human conditions, and making laws applicable thereto; otherwise government would be utterly impossible.

The first section of the Fourteenth Amendment was never intended to prevent and can not be made to prevent such practical considerations. It can not be made to operate so as to prevent government, and yet that is what it would do if it prevented classification of property for taxation. If it could be invoked to prevent such classification and the application of different methods to each class, it could much more be invoked to prevent those laws of which our statutes are full, directed to one class of citizens specifically, to one class of property or remedies specifically, as against another class; and yet to do this would strike from the statute books of every State many of the most beneficent laws.

Take the power of eminent domain, the most radical and peremptory power which the government can grant. That power is given to railroad companies and certain other corporations and persons for certain purposes, and denied to every other person. It is a most substantial privilege and a most important right. Yet this is not granting privileges and immunities to one class of citizens not granted to all others, nor is it denying to all the equal protection of the law, *because all persons who put themselves under the same circumstances and conditions to which the law applies, can invoke this sovereign power.*

Witness the law of Indiana, and of many other States, concerning amalgamation. Here is a classification of persons *on account of the quality of*

their blood; a classification from which they can not extricate themselves; a classification because of an accident which they could not control; and a positive denial, to that class, of the most valuable and sacred privileges, accorded to all others who, by accident of birth, do not happen to have in their veins the forbidden taint. Yet this is not denying to one class of persons privileges and immunities not granted to others, nor is it denying to them the equal protection of the laws.

State v. *Gibson*, 36 Ind. 389.

Under many tax laws, the owners of large tracts of land in single pieces, situated in the heart of cities, are favored in the rate of valuation and assessment over those who owned small lots, by being given a "farm rate." Thereby that class of persons who, in the cities, keep their real estate of the size of small farms, are given a protection from the rate of taxation not given to any other citizen; yet this has never been imagined to be discrimination.

There is no more substantial right than to a trial by jury, and yet, by the laws of every State, trial by jury is granted in some cases and in other cases, of the very gravest importance, trial by jury is denied. Yet this is not discrimination. It is not granting to one class of citizens privileges denied to all other classes of citizens; it is not the denial to any citizen of the equal protection of the laws.

Take the first feature of all tax laws, the poll tax. Here citizens are *classified according to age*;

it is a classification from which they can not escape, over which they have no control. And yet citizens of given ages are subject to the special and direct burden of a poll tax, while other citizens are expressly exempt therefrom. It can not be denied that this is a substantial burden; it can not be denied that those who are exempt from the poll tax enjoy a substantial immunity, the immunity from direct taxation—the most aggravating and burdensome of all species of taxation—and yet it would amaze any court to hear advanced the proposition that the Fourteenth Amendment was thereby violated.

Take the numerous laws granting special privileges to the old soldiers. A resume of the privileges which they, by law, enjoy, and which are denied all other classes of citizens, would be most interesting. Yet these laws are not a violation of the Fourteenth Amendment, and such classification and bestowal of privileges, were never intended to be covered by it.

These illustrations make it clear that the Fourteenth Amendment does not prevent classification of citizens, property, remedies and rights for various purposes, as the legislative wisdom may direct, provided all, *under like conditions*, enjoy the same rights and suffer the same burdens, and provided the distinction is founded in the nature of the property or condition to which it is directed and is designed to secure the largest substantial equality of burdens and benefits. In short, they make it clear that the Fourteenth Amendment is

not to be interpreted as preventing such latitude in the enactment of laws as would prevent the practical operation of the government itself.

8. This is infinitely more true of methods of taxation than of any other subject. The theory of taxation requires all persons to bear their fair share of the public burdens. AN EQUALITY OF BURDENS, is the thing desired. This does not mean that the same method of taxation shall be employed as to all property, whatever its character. If this were true, taxation would become most unjust, if not, indeed, impossible. *Equality of public burdens could not be secured, unless different methods of assessment and valuation are applied to to different classes of property.*

Taxation is a practical science, and not an exact science.

In *State Railroad Tax Cases* 92 U. S., on p. 612, Mr. Justice Miller clearly expressed this truth:

> "But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

9. Since the Fourteenth Amendment can be applied in this case, only by forced construction, it is clear that a construction will not be adopted which distributes the public burdens most unequally, and delays, obstructs and prevents the securing of that on which the Government exists.

Yet this would be the result of applying the same methods to all classes of citizens and providing the same procedure and machinery for the assessment of the owners of all classes of property.

Property is radically different in character. Nothing could be more different than land constituting the right of way and road-bed of a great trunk line through a sterile and rocky district, and a farm adjoining that right of way, barely yielding to its owner a meager sustenance. Nothing could be more different than a cart and horse employed on that farm and a mighty engine, with its train of capacious cars, passing over that railroad track, carrying to the seaboard the commerce of the world. If the same methods of ascertaining the valuation of these most different pieces of property were employed, it is plain that any fair taxation and any equal distribution of burdens would be practically impossible.

10. It must be remembered that in taxation, EQUAL RESULTS is the thing supremely demanded, and not SIMILAR METHODS. *Results and not methods are aimed at.* It is only by applying the appropriate method to different classes of property that approximately equal results can be attained. Surely the Constitution will not be construed as forbidding this. It has been repeatedly decided that the owners of one class of property may be denied substantial rights, granted to every other class of property; that one class of citizens may be burdened in a special way, from which all other classes of citizens are exempted; and especially

that as to taxation, both property and persons may be classified and different methods applied to each class involving the denial of substantial rights to one class, granted to other classes. The only common requirement is that every member of the same class, shall, under the same conditions, be treated alike. If the law operates alike on all belonging to the same class, under the same contions, it is consistent with the Fourteenth Amendment.

11. The scope of the Fourteenth Amendment upon this particular subject is clearly stated in *Barbier* v. *Connolly*, 113 U. S., on p. 31.

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all *under like circumstances* in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, EXCEPT AS APPLIED TO THE SAME PERSUITS BY OTHERS UNDER LIKE CIRCUMSTANCES; that no greater burdens should be laid upon one than are laid upon others, IN THE SAME CALLING AND CONDITION, and that, in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. * * * Class legislation, discriminating against some and favoring others, is prohibited, but legislation

which, in carrying out a public purpose, is limited in its application, if WITHIN THE SPHERE OF ITS OPERATION IT AFFECTS ALIKE ALL PERSONS SIMILARLY SITUATED, IS NOT WITHIN THE AMENDMENT."

12. As applied to taxation this proposition has been repeatedly and emphatically affirmed.

In *Bell's Gap Railroad Company* v. *Pennsylvania*, 134 U. S., 232–7, the tax assailed was a tax on all moneyed securities, at the rate of 3 mills on the dollar of their ACTUAL value; but the bonds and other securities *of corporations* were taxed at the rate of 3 mills on the dollar on their FACE or par value. Here was the denial, to corporations and the owners of corporate securities, of very substantial rights indeed—the right to be taxed upon the actual value of the securities they held. This right was granted to the holder of every other moneyed security in the State. The law was assailed as being a violation of the last clause of the Fourteenth Amendment, forbidding the denial to any citizen of the equal protection of the laws; but this Court held that, as the law operated alike upon all corporate securities, there was no discrimination.

On p. 237 the Court says:

"The law does not make any discrimination in this regard which the State is not competent to make. ALL CORPORATE SECURITIES ARE SUBJECT TO THE SAME REGULATION. The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain

a separate and special rate, upon a valuation estimated in a separate and distinct manner from the rate and method of assessing all other property of those engaged in the same kind of business. The law was attacked as conflicting with the Fourteenth Amendment, but this Court unanimously held that it did not. The language of the Court in *Bells' Gap* v. *Pennsylvania* and *Home Insurance Company* v. *New York*, *supra*, is quoted with approval.

In *Railroad Company* v. *Gibbs*, 142 U. S. 386, the law assailed provided for a Railroad Commissioner, whose expenses and salary should be apportioned among and borne by the railroad companies of the State. The law was attacked as a violation of the Fourteenth Amendment because it denied to railroads the equal protection of the laws in requiring railroads alone to pay salaries, no other persons being required to pay like salaries; and because railroads were thereby subjected to a tax unlike any other tax in the State, in nature and amount. But this Court held that the law was valid.

In *Railway Co.* v. *Mackey*, 127 U. S. 205, a statute of Missouri, making railway companies liable for injuries to employes caused by the negligence of co-employes, was attacked as a violation of the Fourteenth Amendment, because it applied to railroad companies alone, and to no other person or corporation. Here was the denial to railroad companies of a most substantial right, indeed, which was granted to every other person

in Missouri—the right of being exempt from liability for the injury and death of an employee caused by the negligence of a co-employe. It was a most onerous burden imposed upon railroad companies from which every other person in Missouri was exempt. And yet the Supreme Court of the United States held that this was not denial of the equal protection of the laws within the meaning of the Fourteenth Amendment. On page 209 the Court says:

"The objection that the law of 1874 deprives the railroad companies of the equal protection of the laws is even less tenable than the one considered. It seems to rest upon the theory that legislation which is special in its character is necessarily within the constitutional inhibition; but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it, or in the extent of its application. Laws for the improvement of municipalities, the opening and widening of particular streets, the introduction of water and gas, and other arrangements for the safety and convenience of their inhabitants, and laws for the irrigation and drainage of particular lands, for the construction of levees and the bridging of navigable rivers, are instances of this kind. Such legislation does not infringe upon the clause of the Fourteenth Amendment requiring equal protection of the laws, because it is special in its character; if in conflict at all with that clause, it must be on other grounds. And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, IF ALL PERSONS BROUGHT UNDER ITS INFLUENCE ARE TREATED ALIKE UNDER THE SAME CONDITIONS. A law giving to mechanics a lien on buildings constructed or repaired by them, for the amount of their work, and a law requiring railroad corporations to erect and maintain fences along their roads, separating them from land of

This method is applicable to this class of property.

LOCAL CORPORATE PROPERTY.

The method of procedure in the case of certain *local corporations*, described by the statute, involves:

(1.) A sworn statement of their property and its value to the Township Assessor, to be returned by him to the County Auditor, who finally lays it before the County Board of Review;

(2.) The assessment of the capital stock of these corporations, by the County Board of Review, without further notice to the corporations, save such as the law gives of the time, place and purpose of the meeting of the Board; and,

(3.) From the decision of the County Board appeal lies to the State Board of Tax Commissioners.

Secs. 73, 74, 114 *and* 115, *Indiana Tax Law*, 1891.

This method is well designed to secure proper treatment of this class of property.

GENERAL RAILROAD PROPERTY.

The method of procedure in the assessment of "*railroad track*" *and* "*rolling stock*," involves:

(1.) A written statement giving voluminous information concerning it, made to the State Auditor for the use of the State Board of Tax Commissioners; and,

(2.) The assessment of such property by the State Board, from whose decision there is no appeal.

This method is strikingly well designed to secure the greatest justice, correctness and equality in the assessment of this kind of property.

MORTGAGED, LEASED OR HIRED PROPERTY.

Generally, such property is treated, for the purposes of taxation, as the property of the person *having possession or control.* This general principle includes the "rolling stock" leased by railroad companies, such leasing companies always having possession or control. The general principle of taxing property to the owner, if practicable, and, if not, then to the person or corporation *controlling the same*, pervades the entire law.

Secs. 26, 27; 11, 12; 80, 83, 85, *Indiana Tax Law of* 1891.

LOCAL AUTHORITIES FOR LOCAL PROPERTY; GENERAL AUTHORITIES FOR GENERAL PROPERTY: SUCH IS THE THEORY OF THE REVENUE LAWS OF INDIANA.

14. Laws, similar to that of this State, in respect to the different tribunals afforded for the purpose of assessing railroad property and that of individual citizens, are in force in the States of Alabama, Arkansas, California, Colorado, Connecticut, Texas, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Missouri, Nebraska, New Hampshire, New Jersey, Massachusetts, Mississippi,

South Carolina and Tennessee. We are unable to state what are the provisions in the six States last admitted, as their statutes are not accessible to us. The fact that so large a number of the States have made similar provisions is proper to be considered in connection with the charge that an unjust discrimination has been made by law in this State, inasmuch as it could hardly be supposed that all the Legislatures making similar laws are imbued with the evil spirit which is charged against the General Assembly of this Commonwealth. Wherever the constitutionality of such laws has been questioned the laws have been upheld.

Gulf R. R. Co. v. *Morris*, 7 Kas. 210.
Francis v. *R. R. Co.*, 19 *Ib.* 303.
Dubuque v. *C., D. & M. R. R. Co.*, 47 Ia. 196.
Central R. R. Co. v. *Board*, 67 Ia. 199.
Carlisle v. *Pullman Co.*, 8 Col. 320.
C., N. O. & T. P. R. R. Co. v. *Commonwealth*, 81 Ky. 492.
St. L., I. M. & S. Ry. v. *Worthen*, 52 Ark. 529.
Porter v. *The R. R. Co.*, 76 Ill. 564.
L. & N. A. R. R. Co. v. *The State, etc.*, 25 Ind. 180.
Home Ins. Co. v. *N. Y.*, 134 U. S. 594.
Bell's Gap R. R. Co. v. *Penn*, 134 U. S. 232.

15. The nature of the property renders impossible any just assessment of railroad track and rolling stock, by the local officers, with all the cumbersome machinery of purely local taxation. The

property denominated by the statute as "railroad track" and "rolling stock" are inseparably part of the great unit of the road. Any correct estimate of their value must be the result of their review:

(1.) By a single taxing tribunal; and

(2.) As a part of this great unit.

It is impossible that the multitude of township assessors of the many townships through which a great road runs could estimate the value of the property which the statute denominates, "railroad track" or "rolling stock." If they could do so it would be an immense task for the railroads to furnish all these township assessors the necessary data for the estimate of such property within their respective jurisdictions.

And if all this was done and benefit of appeal was taken, *still the railroads would land before the State Board of Tax Commissioners, where they are now, and receive the same ultimate judgment that they now originally receive.*

In placing them within the jurisdiction of the State Board, *in the first instance*, the law does not change the ultimate result, if the railroads exercised the right of appeal which is what they ask for; and, at the same time, the law relieves the railroads of the vast and vexatious task of traveling through the mazes of township assessors with statements of property within the limited jurisdiction of each, County Boards of Review, and finally reaching the tribunal of last resort,

the State Board of Tax Commissioners. The railroads themselves do not want any such procedure. It impeaches the common sense of railway owners, operators and constructors to say that they want it.

16. But counsel say they do want and demand the same rights as are given to other property owners. In view of the fact that it is impossible they should want the entire procedure of township assessors, County Boards, etc., and in view of the fact that, after all, the only right given other property owners not given railroad owners, is *the right of appeal*, the language of the Supreme Court of Indiana, in this case and on this point, becomes uncommonly pertinent.

> "When stripped of all verbiage, the gist of the objection to the law on account of its not affording to railway companies in the assessment of the property denominated "railroad track" and "rolling stock" equal protection of the law, is that the State Board of Tax Commissioners, the highest body or board in the State having jurisdiction, or which is given authority to either assess or correct assessments of property, is given *original* jurisdiction in the assessment and valuation of this class of property, while it acquires jurisdiction in other classes of property *by appeal.* Under the act, the assessment and valuation fixed upon property is not necessarily final until passed upon by the State Board. If parties are content with an assessment upon their property by the assessor or county board it may rest at that point, but an appeal may be taken to the State Board." Record, p. 181.

Yet this leaves appellant in a no less unpleasant logical dilema. They demand an appeal. What kind of appeal? Such as other property owners have. And what appeal in this? An appeal to

the State Board of Tax Commissioners. But the railroads are already before the State Board of Tax Commissioners, in the first instance. *So that we find them demanding an appeal to the same board before which the law already places them.* They complain of the State Board; and yet complain because they have not, as other property owners have, the right of appeal to the judgment of that very board.

17. Such a right of appeal is not included in the meaning of equal protection of the laws. As the Supreme Court of Indiana forcibly says on this point:

> "Equal protection of the law does not require that all persons shall have the right of hearing or a trial before the same tribunal and in all the same tribunals, and have the same right of appeal from one to another. If it has any such interpretation, then the theory upon which our courts are constructed and given jurisdiction, in various causes of action, the right of appeal given in some cases, in others not, and the jurisdiction of some courts made final in one class of cases and in others not, is all wrong and our system of jurisprudence must fall; but that such is not the theory or interpretation to be given to section 1, article XIV, of the Constitution of the United States is too clear to admit of argument or the citation of authority. In our system of jurisprudence courts of different grades and jurisdictions are established, and an appeal is allowed from one to another only when the right of appeal is given by statutory enactment." Record, p. 181.

Exactly this particular and precise contention, was made by the railroads, in the *Kentucky Railroad Tax Cases*, and, by this Court, decided adversely to their claims.

Mr. Justice Matthews, in these celebrated cases, said:

"The rule of equality, in respect to the subject, *only requires the same means and methods to be applied impartially to all the constituents of each class*, so that the law shall operate equally and uniformly upon all persons in similar circumstances.' There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination, in this respect, which the discretion of the Legislature has seen fit to impose. * * * * * * * * *

The final (p. 338) point of objection seems to be reduced to this In the case of ordinary real estate, it is said, when the assessor has made his valuation, it is submitted to a board of supervisors, who may change the valuation, but not so as to increase it, without notice to the tax-payer, and an opportunity for a formal hearing, upon testimony to be adduced under oath, and with a right of appeal on his part, first, to a county judge, and, again, if the amount of the tax is equal to fifty dollars, to the Circuit Court. This is contrasted with the proceeding in the case of railroad property before the board of railroad commissioners, in which it is alleged there is no notice of an intended change in the valuation returned by the company, and no appeal allowed if it is increased.

The discrimination, however, is apparent rather than real. An examination of the statutes shows that the original valuation of the assessor, in case of ordinary real estate, is conclusive upon the tax-payer, no matter how unsatisfactory, and the appeal allowed is only from the action of the board of supervisors, in case they undertake to increase the valuation made by the assessor. But in the case of railroad property, no Board has authority to increase the original assessment made by the railroad commissioners, and there is, therefore, no case for an appeal similar to that of the owner of ordinary real estate.

"But were it otherwise, the objection would not be tenable. We have already decided that *the mode of valuing* railroad property for taxation under this statute, is due process of law. That

being so, the provision securing the equal protection of the laws *does not require, in any case, an appeal, although it may be allowed in respect to other persons, differently situated.*

"This was expressly decided by this court in the case of *Missouri v. Lewis*, 101 U. S. 22, 30. It was there said by Mr. Justice Bradley, delivering the opinion of the court, and speaking to this point, that, 'the last restriction, as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances (p. 339) to resort to them for redress.' The right to classify railroad property, as a separate class, for purposes of taxation, grows out of the inherent nature of the property, and the discretion vested by the Constitution of the State in its legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceeding to value it. If such a scheme is due process of law, the details in which it differs from the mode of valuing other descriptions and classes of property can not be considered as a denial of the equal protection of the laws."

Kentucky Railroad Tax Cases, 115 U. S., on p. 337–8–9.

The great opinion of Mr. Justice Miller, in the *State Railroad Tax Cases*, is full of language bearing expressly upon this particular point. In the law there attacked by the railroad companies, there were nearly the same provisions as in the law now before this Court; but the Illinois law was without the safeguards expressly provided by the Indiana law. This Court in that case said, on p. 610–11:

"It is said that the statute of Illinois is void, because it violates the principle of uniformity, and taxes corporations in a manner different from that which governs taxation of individuals. The contention is, that the rule of treating the road, its

rolling stock and franchises, as a unit and assessing it as a whole, on which each municipality levies its taxes according to the length of the road within its limits, violates the principles of this section (the uniform taxation section of the Illinois Constitution). We have already discussed this question, and are of opinion that *taxes assessed by that rule on the railroad property by the municipality are uniform when the rate of taxation is the same on the assessment thus ascertained that it is on other property.*"

State Railroad Tax Cases, 92 U. S. on p. 610–11.

Appellants attempt to break the force of these decisive opinions by the singular claim that because the Constitutions of Illinois and Kentucky do not prevent classification of property for taxation and the employment of different methods of assessment, therefore the laws of those States do not violate the Constitution of the United States, no matter how bold the classification, how different the methods, how unequal the results. That is, *the State Constitution, which permits them, shields them from the Federal Constitution, which forbids them:* as though, in the eyes of the Federal Constitution there is any difference between State Constitutions and State statutes! What a discovery this would have been for counsel for the State in the San Mateo cases? They could have said: "Suppose our statutes do violate the Federal Constitution; our State Constitution sanctions them, and this is an effectual shield from the Constitution of the United States." Does not counsel's position seem absurd? We know that if a State statute *or Constitution*, denies the equal protection of the laws to any citizen or deprives him of his property, liberty or life without due process of law, it falls and

ought to fall before the Federal organic law, irrespective of its being merely a State statute or a State Constitution.

However, appellant is not right in asserting that the Constitution of Indiana requires a uniform method of valuation of property for taxation. It requires only "such regulations as shall secure a *just* valuation." *Louisville, etc., Railroad Co.* v. *State ex rel.*, 25 Ind. on p. 180.

In *Railroad Co.* v. *Worthen*, 52 Arkansas 529, the law provided for assessment of railroad property, including railroad real estate every year, whereas other real estate is assessed every other year; railroad property was to be assessed by a State Board, whereas all other property was to be assessed by the local assessor at its situs; the owners of railroad property had no other notice except the law itself, whereas the owners of all other property had special notice; the assessment of railroad property was final and irrevocable, whereas from the assessment of all other property there was an appeal; and finally railroad property was assessed by a State Board upon its best opinion without the necessity of hearing a witness. The law was assailed as violating the Fourteenth Amendment, but the Court upheld the law.

On page 537, the Court says:

"The objection of the railways to be placed in a class to be dealt with separately, by the Legislature, is thus seen to be without foundation or authority. But the power thus to classify makes it competent for the Legislature to provide the periods for the assessment of each class, as well as the mode. It is competent to provide that one kind of property shall be assessed every

year, while the requirement reaches another only once in two years. Such a distinction between real and personal property is made without objection; but the difference between a railway with its equipments and real estate is perhaps not greater than between real estate and some species of personalty. The fact that this statute denominates railway track as real estate, does not obliterate the difference between them and ordinary farm lands, any more than it would in fact convert railroads into personalty to call them so, as was done for the purposes of taxation by the acts of 1871–1879. *The nature of the property justifies classification and separation from the body of the real estate* upon the grounds that justify the separate classification of realty and personalty. The requirements of an annual assessment of railways affords, therefore, no greater cause for complaint than does the like requirement for personal property and the complaint of discrimination is groundless. * * The objection urged here to the failure to provide for an appeal from the valuation fixed by the State board was disposed of in the Kentucky Railroad Cases, cited above, and what is there said of the relative rights of the owners of railways, and of the owners of other property, and of the power of the tribunals which fix the values of the several classes of property for taxation, is so nearly applicable under the laws of this State, that we quote the language as disposing of the question."

The language used by this court in the Kentucky cases is then quoted and adopted, and the court proceeds:

"The provision contained in the Kentucky act for the enforcement of the tax by proceeding in an ordinary court of justice, *does not alter the case as to the questions presented*, for in such proceedings the valuation fixed by the board is conclusive in the absence of a statutory provision authorizing inquiry into their finding, and it could not be assailed unless for fraud or want of jurisdiction—grounds upon which the court of equity could have acted in this case as readily as could the Kentucky tribunal in the case instanced."

In *Railway Co.* v. *Board*, 67 Ia. 199, the law as-

sailed provided for the assessment of all railway property every year, whereas all other real estate was assessed every other year. This was attacked as violating the State and Federal Constitution, requiring equal protection of the laws.

On page 201:

"The argument, in substance, is that individuals, and corporations other than railway corporations, escape, or may escape, for at least one year, taxation on improvements placed on real estate, and therefore the statute in question discriminates against the latter class of corporations. All railway property is assessed by the same tribunal and in the same manner, and all such corporations have the same privileges and immunities, and are subject to the same burdens, so far as taxation is concerned. We think it is competent and not in conflict with any provision of the constitution of this state or of the United States, for the State to provide that any particular class of property belonging to all corporations of the same character, and which possess the same rights and privileges, may be assessed in the same manner by the same tribunal, and that the property of individuals and other corporations may be assessed by other officers and at different times."

Nothing can be clearer than that, in the *method of procedure* prescribed for the assessment of various classes of property in Indiana, including "railroad track" and "rolling stock," and the rights involved therein, the owners of railroads are not denied the equal protection of the laws.

IMPORTATION OF VALUES.

Are the railroad companies denied the equal protection of the laws in the mode by which the Board arrives at a judgment of the "true cash value" of their "railroad track" and "rolling stock?"

A law which provided for taxation in Indiana of property in another State, would not be valid even if it equally applied to all property owners; and we cheerfully concede that, if a law makes such provision in some cases, and not in others, it would be obnoxious to the discrimination clause of the Fourteenth Amendment.

Not only does the Indiana tax law of 1891 *not* provide for, permit or result in the taxation in Indiana of property belonging to railroads and situated in other States, but it expressly, repeatedly and in terms, confines taxation, to property "*within the State of Indiana.*" For the convenience of the argument, the sections which give such reiterated emphasis to this, may better be referred to, somewhat later in the discussion.

1. Appellants contend that the tax law "permits, invites, requires and results in the arbitrary importation and assessment, to 'railroad track' and 'rolling stock' taxable in Indiana, of large values belonging wholly to corporate property situated in other States and duly taxed in other States."

The basis for this proposition is that section 80 of the tax law requires the "rolling stock" of railroad corporations to be listed and taxed "in proportion that the main track used or operated in such county, township, city or town, bears to the length of the main track used or operated by such person, company or corporation, whether owned, operated or leased by him in whole or in part;" and that sections 83 and 85 require certain schedules to be returned by the railway companies,

showing the "length of the main, side, and second tracks, and the proportions in each county, township, and the total in the State, the 'rolling stock' operated by the company, the amount of capital stock authorized, the amount of capital stock paid up, with its market or actual value, together with the road's indebtedness in excess of current operating expenses, and also the listed valuation of all its tangible property in the State."

Appellants' argument is that section 80 requires, and the schedules described in section 85 also require, the valuation and assessment of the "railroad track" and "rolling stock" of railway corporations, by dividing the entire property of the railway company, including earnings and franchises, by the entire number of miles of the length of its road, thus arriving at the average value of a mile, and multiplying that average mile by the number of miles in Indiana; that, as this average value of a mile is, in value, far in excess of the value of an average mile of the road in Indiana, therefore there is a taxation of values outside of the State, an "importation of value," to use the apt phrase coined by appellants' counsel.

2. Even if the "mileage rule" had been adopted, both as to "railroad track" and "rolling stock," it would not have resulted in an "importation of values" for taxation here, nor would such rule, in any sense, be an unjust or illegal method of arriving at the "true cash value" of the "railroad track" and "rolling stock" within the State of Indiana, as we shall show later on in this brief.

3. But we deny appellant's conclusion. *It is not true* that the railroad companies are taxed upon the items scheduled. *It is not true* that the schedules are required for any such purpose. The schedules required of the railway corporations are *guides*, which the law provides the railway companies, themselves, shall furnish to the Board of Tax Commissioners, directing them toward a true judgment of the "true cash value" of their taxable property within the State.

It is too clear for argument that the "true cash value" of the "railroad track" and "rolling stock," properly taxable in Indiana, could never be ascertained by merely looking at the road's physical condition and considering that physical condition merely as existing within the State, and nowhere else. The value of a road means more than the iron or steel rails, than the wooden ties, than the iron spikes, than the ballasted bed: it includes the fertility of the country through which it passes, the destination to which it tends—or, in a word, the volume of business which it does: the property denominated "railroad track" and "rolling stock" are the most considerable elements of the road, and how better could their "true cash value" be ascertained than to first ascertain the total value of the road of which they are the most important parts, and then deduct from this total value, the value of everything else, except "railroad track" and "rolling stock." Such a method is as nearly exact and scientific as the science of taxation admits of.

Therefore the schedules which the law requires

to be returned, require not only a description of its physical condition, specified in the first three clauses of section 85, but also the amount of its capital stock authorized and paid up, with its market and actual value, the road's indebtedness, etc. All these are indispensable indexes of the value of the road as a unit, and, therefore, of the value of that part of it which lies within the borders of Indiana; and, by the same reasoning, of the "true cash value" of its *chief constituents* in Indiana, namely "railroad track" and "rolling stock." They are *aids* to the judgment of the Board in arriving at the "true cash value" of the railroad's "railroad track" and "rolling stock." They are *witnesses* furnished by the railroad companies to testify upon facts, without which the Board could never make an intelligent appraisement of the "railroad track" and "rolling stock." *But the law does not contemplate the taxation of these scheduled items.* IF IT DID IT WOULD SAY SO. It expressly requires taxation of "railroad track" and "rolling stock" *and nothing else.* The schedules are to aid the Board to a just estimate of the value of these, and nothing more.

It is the well settled law of taxation that a Tax Board or body may seek information throwing light upon the property taxed, when, where and in what manner it chooses; but the Legislature, in its wisdom, requires certain data, designed to assist the Board to a true conclusion as to the "true cash value" of the property of railway corporations within the State. These data,

in justice to the railway companies, the Legislature requires the companies, themselves, to furnish, under oath, in the schedules of which appellants complain. These data are merely *criteria of value*, and nothing more.

Even if these data, which the Legislature has prescribed, as criteria of value, to aid the Tax Board in arriving at a correct judgment, were not the best for the purpose, this fact would not affect the validity of the Board's assessment. What data shall be furnished, is a mere matter of legislative wisdom, with which the courts have nothing to do.

4. But we affirm that the information required in these schedules constitutes the best possible criteria of value, in determining the "true cash value" of taxable property of railway corporations within the State. The length of main track, second track, sidings, turnouts and the terminals of the road indicate its possibilities for business, and, therefore, its potential value; the capital stock authorized, indicates the probable value which its promoters believed it would attain; its capital stock paid up, indicates the confidence in the road's possibilities which capital was willing to back with its gold; the market and actual values of its stock shows, by the best possible test, the judgment of the market itself upon the road's value, while the indebtedness of the road, over and above earning expenses, demonstrates to what extent capital was willing to invest, in addition to the capital stock paid up; and all of these

criteria are indispensable in estimating the two material componants of a road, namely, its "railroad track" and "rolling stock."

All of this information is absolutely indispensable in arriving at any sane conclusion as to the "true cash value" of the company's taxable property within the State. Without considering these in making up their judgments the conclusion of the Commissioners would be merely a wild, unmeasured and unsubstantial guess.

This method is infinitely more exact than to estimate the "railroad track" as being so much real estate, worth so much per acre; so much steel rail, worth so much per ton; som any wooden ties, worth so much per thousand, etc., and this, too, considered as vacant earth, idle iron, deposited and decaying timber. Yet this is the method appellant insists on, and the absence of which is charged to be an infraction of the Constitution of the United States.

5. The above analysis demonstrates that it is possible, at least, to construe the schedules to be merely *criteria of value*, which the legislative wisdom required the railway companies themselves to provide for the guidance of the Board, and the Court will not overthrow the assessment and hold the law itself invalid, if a rational construction of the law is possible, whereby they might be upheld. So that even if the construction of the sections (requiring these schedules, to be merely criteria of

value) is a *possible* construction only, and that construction is necessary to uphold the law, it would have to be adopted.

But we think that it is not only a possible construction, but the ONLY construction. The analysis of the schedule above set out proves this; and it is also conclusively proved, beyond all possible controversy, by the context of the law itself, which confines the Board to the valuation and assessment of property within the State of Indiana only. And it is a fundamental rule of statutory construction that a statute must be considered as a whole, and not in detached portions.

Potter's Dwarris on Statutes and Constitutions, pp. 28–678.

Stout v. *Board*, 107 Ind. 343 on p. 347.

Storms v. *Stevens*, 104 Ind. 46 on p. 51.

6. Bearing this fundamental rule of construction in mind, what do all the sections of the law bearing on this direct question indicate? Section 78, which defines the property known as "railroad track," confines its description solely to property *within the State;* section 79, which prescribes the manner of taxing said "railroad track," refers solely to the property of the railway corporation *in Indiana;* section 83, describing schedules required to be returned to County Auditors, expressly limits the use of "rolling stock" to the road *within the State;* section 85, in the fifth requirement of the fourth specification, in terms requires "the total listed valuation of all its tangible property *in this State.*"

All of these sections tend to one conclusion only, and that is that the State Board of Tax Commissioners was required by the law to tax appellant's "railroad track" and "rolling stock" within the State of Indiana, and nowhere else; *and the schedules set out in the midst of these sections can not possibly be held to require a thing not in harmony with the rest of the law*—they can be held only to be aids and guides to the Board in arriving at the "true cash value" of railway property within the State of Indiana, to the assessment and valuation of which alone the whole law is confined. And this is the construction placed upon this statute by the Supreme Court of Indiana:

"These schedules are required to be filed for the purpose of giving a description to the property and as a source of information as to value." Rec. p. 190. "When the whole act is read together it purports to be only an act to tax such property as is subject to taxation within the State"—Opinion Supreme Court of Indiana, record p. 191.

As already shown, this construction is conclusive.

This brief p. 11–15, *supra.*

"Perfect equality and perfect uniformity of taxation * * is a dream unrealized. * * The most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

State Railway Tax Cases, 92 U. S., p. 612.

7. How the exact value of "rolling stock," operated upon a great line of railway within the State can best be estimated is a serious question, which has perplexed students of the science of taxation

for many years. The "mileage basis," which appellants so viciously assail, has been held to be as good and as just a method as any yet devised; and even were this method of taxation prescribed by the law, *in express terms*, for both "railroad track" and "rolling stock," it would not be invalid.

In the *State Railroad Tax Cases*, 92 U. S., on p. 611, this precise question was under discussion, and was decided by the Court in the following uncommonly positive and lucid language:

> "This Court has expressly held in two cases, where the road of a corporation ran through different States, *that a tax upon the income or franchises of the road was properly apportioned by taking the whole income or value of the franchise, and the length of the road within each State, as the basis of taxation.*"

But, according to appellants' theory, this would be clearly an "importation of values" and taxation of franchises without the State. For, according to appellant's position, if the income of appellant's road in Illinois and Pennsylvania was vastly larger than the income of the road in Indiana, and if its franchises in Illinois and Pennsylvania were far more valuable than its franchises in Indiana; and if the income and franchises within the State of Indiana were estimated upon the "mileage basis" and taxed accordingly, there would be an "importation of values" fully taxed in other States; and yet this Court many times expressly says that such a method of estimating values is proper, just and legal.

The cases to which Judge Miller referred, in the above quotation, were the *Erie Railway Co.* v. *Penn-*

sylvania, 21 Wall. 492, and the *Delaware Railroad Tax*, 18 Wall. 206.

The Erie Railway Co. owned a railway 455 miles long, 42½ miles of which ran through the State of Pennsylvania. The State of Pennsylvania imposed a tax upon the gross receipts of all railway companies doing business in the State. The taxing authorities, adopting the "mileage basis," took $\frac{42\frac{1}{2}}{455}$ of the total income, as the basis of taxation of the gross receipts of the Erie Railway. This Court upheld this tax, *although it was estimated by an undisguised adoption of the mileage method.* It is rare indeed, when a case so exactly in point as this one, favors courts and counsel with light upon a pending controversy.

The tax assailed in the *Delaware Railroad Tax Case*, was upon the "net earnings or income received from all sources, provided that when a line of railroad, liable to the tax, lay partly in the State and partly in an adjoining State or States, the part or share of such net income or earnings of the company, only should be subject to the tax, *as would be in that proportion to the whole length of such railroad.*" A further tax was upon the "actual cash value of every share of the road's capital stock, with a similar provision concerning apportionment, when the road ran through other States than the State of Delaware."

This tax was assailed upon precisely the same grounds which counsel take here, viz.: That, as a very large proportion of the earnings of the road was in other States, and the bulk of its capital

stock held elsewhere, therefore an apportionment of values by the mileage method would be an "importation of values." But in that case, this Court, in passing upon this precise point, said (on p. 231) that such a rule:

> "Though an arbitrary one, *is approximately just, at any rate, is one which the Legislature of Delaware was at liberty to adopt.* The State may impose a tax upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation, or its separate corporate poperty, *and the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative wisdom.*"

In *Maine* v. *Grand Trunk Railway Co.*, 142 U. S. 217, the tax assailed was estimated by dividing the amount of the gross transportation receipts by the number of miles of railroad operated, thus ascertaining the gross receipts for an average mile, then fixing a certain rate on the amount thus found and multiplying by the number of miles of the road within the State of Maine. This tax was assailed chiefly as an interference with interstate commerce, and the Court's opinion is largely quoted from elsewhere in this brief; but it is precisely in point here, because the road in question did most of its business and received most of its transportation receipts outside of the State of Maine. This method of taxation, according to appellant's position, clearly would have been an importation of values. It is no answer to say that this was an *excise* tax. The difference between *ad valorem* and excise taxation is well understood; but the exact point involved at present is that a State can

not tax values outside of its jurisdiction, under any guise whatever, excise or otherwise. And if the mileage method results in the importation of value in one case, it does in the other. In speaking of this method, the Court said:

> *"The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results, both to the State and the corporation taxed."*

See also upon the point of measure of value:

Porter v. *Railroad Co.*, 76 Ill. 561.

Railroad Co. v. *Commissioners*, 20 Kan. 141.

Railroad Co. v. *Surrell*, 88 Ill. 535.

And directly in point upon mileage method see

Western Union Telegraph Co. v. *Massachusetts*, 125 U. S. 530.

Massachusetts v. *Western Union Telegraph Co.*, 141 U. S. 40.

With such eminent, positive and direct authorities upon this precise question, supplemented by the plain provisions and manifest intent of the law, further argument would seem to be more than unnecessary. The schedules, which so excite appellants, are merely *criteria of value*, and the method described in section 80 is merely a method by which the Board is aided in arriving at the "true cash value" of the property there required to be taxed—a method "as good and just as any yet devised."

LEASED ROLLING STOCK.

There is no importation of values or "double taxation" by treating leased "rolling stock," in Indiana, as the property of the railroad leasing it. Certainly the railroad has not been taxed on it before. And certainly part of its capital is expended for this *leased* property, precisely as it would have been expended if it had purchased the property instead of leasing it. Where is the substantial difference? If the railroads could escape taxation on leased "rolling stock," it would be to their interest not to own a dollar's worth of this important part of their equipment. It would pay them to *lease* every car, and thus escape taxation on an enormous part of their investment.

Appellant contends that "double taxation" results, because this rolling stock is already taxed to its owners, and they fix a rental charge which includes this tax. *How do we know all this?* How is this Court to know it? The presumption is the contrary. But even if it were true, the same reasoning would equally exempt from taxation, the same "rolling stock," if the railroad *bought* it, instead of leasing it; for, if the owner had been taxed on it, and includes that tax in his rental charge, *surely he would include the tax in his selling price*, and the taxation of the property thus purchased would, by appellant's reasoning, be taxation of values already taxed, fully as much as would the taxation of leased property. Patience is, indeed, long suffering which can endure the perpetration of such palpable fallacies.

IMPORTATION, AS A QUESTION OF FACT.

8. It is clear, therefore, that the statute, *as a matter of law*, does not require nor permit the importation of any value, but contemplates the assessment and valuation, of property within this State only.

Did the Board, *as a matter of fact*, tax any value beyond its jurisdiction?

Governor Matthews, upon this exact question, testified as follows:

Q. In assessing plaintiff's property, what, if any, assessment did you make, except upon the railroad track and rolling stock of plaintiff situate in the State of Indiana?

A. We made none whatever.

Q. In assessing property within the State of Indiana, did you assess any property or value outside of the State?

A. We did not.

Record, pp. 168–69.

Mr. Matthews was a member of the State Board of Tax Commissioners, and was testifying as such.

This positive testimony is not denied by a single witness.

Counsel reiterate and restate, through scores of pages, the assertion that immense values belonging in Illinois, Ohio and Pennsylvania were imported into Indiana and taxed here. Absolutely the *only* evidence on this question in the whole

record is the testimony of Governor Matthews above quoted. He says that this assertion *is not true.* He says that *it is not true* that any property of appellant, located in another State, was assessed. He was a member of the Board, and under oath, testified as such. *His testimony is not disputed. Appellant did not even cross-examine him.*

Through a wilderness of pages they try to break the force of this clear, positive and direct testimony, by (a) the increase in the assessment of 1891 over preceding assessments, (b) the schedules required of the railroad companies to aid the Board in its appraisement of "railroad track" and "rolling stock" in Indiana, (c) the return of the railroad company giving *its* appraisement of its own property, (d) *the latter part* of the Board's remarks attached to its statement of its assessments of all the "railroad track" and "rolling stock" in Indiana, and (e) the verified bill of complaint.

If all this were in the record and relevant to the proposition that the Board assessed any property outside of Indiana, and tended to prove the truth of counsel's assertion, it would, at best, become a *question of the weight of evidence merely,* when contrasted with Governor Matthews' direct testimony; and *this court will not weigh testimony.* It would not reverse the case, even if the preponderance of evidence sustained counsel's assertions.

But not only is the preponderance of evidence *not* with appellant, but no pertinent evidence whatever is with appellant.

(*a*) The assessment of 1890 is not in evidence. Even if it were, and showed that the assessment of 1891 was a great increase over preceding ones, it would prove only one thing—that the judgment of the Board was different from that of the preceding Board. This difference in judgment suggests difference in information. The Board is composed of men, and men differ in judgment from one another on every subject, and on none more than on the value of property. A man changes his own judgment upon the value of the same property. The value of "railroad track" and "rolling stock" in Indiana was the subject of the Board's judgment. Courts can not inquire into the correctness of that judgment, except as a matter of fraud only. As Mr. Justice Miller said in the *State Railroad Tax Cases.*

"IF THERE IS AN EXCESSIVE ESTIMATE OF THE VALUE OF THE FRANCHISE OR CAPITAL STOCK, OR BOTH, IT IS BY AN ERROR OF JUDGMENT IN THE OFFICERS IN WHOSE JUDGMENT THE LAW CONFIDED THAT MATTER; AND IT DOES NOT LIE WITH THE COURT TO SUBSTITUTE ITS OWN JUDGMENT FOR THAT OF THE TRIBUNAL EXPRESSLY CREATED FOR THAT PURPOSE."

State Railroad Tax Cases, 92 U. S. p. 616.

(*b*) The schedules required of the railroad companies have already been shown to be mere aids, helps, witnesses to assist the Board to a correct judgment. *The items scheduled are not to be assessed.* On the contrary the law says *they shall not be assessed.* The law confines the assessment by the State Board to property denominated "railroad track" and "rolling stock"

within the State of Indiana. But in arriving at a true estimate of the value of this property, the information contained in the schedules is an important help, *but it is a help, an aid, merely, and nothing more.* To construe it otherwise would be to make it conflict with those other and numerous provisions of the law which confines the assessment of the State Board to "railroad track" and "rolling stock" "*within the State of Indiana.*"

(*c*) The return made by the railroad company shows, among other things, its own *estimate of the value of its own property.* How can the fact that this estimate differs from that of the Board, affect the latter? This, again, would be merely weighing evidence. Even if it were competent to weigh evidence, this could not be considered. The Board was not bound to take the railroad company's appraisement. It might seek its information where, when and in what manner it chose.

"The question then resolves itself into this: Upon what may a Board of Equalization act? May they act entirely upon the assessments and returns made to them, guided by their personal knowledge, or must they accept the assessments and returns as conclusive, unless other and outside testimony is produced? We think they may act entirely upon the assessment and returns made to them, guided by their own knowledge. We do not mean that they are limited to these matters and that they can not procure testimony and avail themselves of other means of information. The matter of equalization is committed to their discretion. It is not a judicial proceeding, nor one from which error will lie. They may avail themselves of such means of information as they may deem necessary. * * * * * * *
If in any matter they desire further information they may seek it whence and in what manner they deem best."

Brewer, J., in *Railway Co.* v. *Commissioners*, 20 Kan. p. 144.

Case v. *Dean*, 16 Mich. 12.

Railroad Co. v. *Surrell*, 88 Ill. 535.

Lowell v. *Commissioners*, 152 Mass. 380.

Sterling Gas Co. v. *Higby*, 134 Ill. 568.

One important fact this return does show—a fact which refutes counsel's statement utterly. It is, by counsel, repeated with wearying iteration, that the P., C., C. & St. L. Ry. Co. have immense quantities of rolling stock outside of Indiana *which never enter the State*, and that the mileage method was applied to all of the company's rolling stock, including this. If this were true it would be lawful, as we have seen. But this company's sworn return shows that every car is used in and through Indiana and other States interchangeably. Record, p. 114.

The *total* number and value of all varieties of cars and locomotives constituting the company's rolling stock is given, and then follows this statement immediately beneath the schedule of *all* the company's rolling stock:

"Length of main track on which SAID *rolling stock is used in Indiana* . 647.42 miles.

"Length of main track on which SAID *rolling stock* is used *elsewhere* (described such road below) . . 498.49 miles."

Here is the sworn statement of the company itself that *all* of its rolling stock is used both in Indiana and elsewhere.

(*d*) The note, which counsel call a "certificate," attached to the Board's statement of railroad assessments, in which the word "road" is used by way of brevity for "railroad track" and "rolling stock," would, at best, be evidence only by inference, that the Board assessed the road's entire equipment, capitalization and debt, even if the word "road" means what appellant contends that it means. But this "certificate" must be taken in connection with the entire statement; it can not be detached from all the other language used by the Board in connection with and as a part of it. The first part of the statement, *omitted by appellant*, shatters even this small and captious contention. It is as follows:

"The State Board of Tax Commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon and the same was ordered to be spread upon the record and to stand as the assessment of the railroad property denominated *railroad track, rolling stock and improvements on right of way for the year 1891;* which assessment is in the words and figures, to-wit (from pages 81 and 89):

TABLE NO. I.

"Value per mile of *main tracks, second main and side tracks, rolling stock, and improvements of right of way*, and in daily use, for railroad purposes as fixed by the State Board of Tax Commissioners for the purpose of taxation for the year 1891."

Record, p. 107.

(*e*) In the absence of evidence, appellant relies upon the fact that its bill is *sworn to* and assumes that where no evidence was offered to overthrow any of its allegations, these averments must be taken as true. This is a rule of pleading and practice new to us. It certainly is foreign to the practice in Indiana. It is foreign to any practice of which we ever heard. If this proposition is correct the fact that a bill is sworn to puts the burden on the defense. The plaintiff might go into court and take his decree without offering any evidence whatever. *The bill was answered by a general denial of every one of its allegations.* Record p. 84. Thereby it devolved upon the plaintiff to prove the same. The defendants were not required to introduce any evidence whatever, until plaintiff had established his case by competent evidence.

Sec. 360, *Revised Statutes of Indiana*, 1881.

The bill was sworn to, *because it asked for a temporary restraining order and finally a perpetual injunction.* Where this is prayed, our statute requires a bill to be verified.

Sec. 1149, *Revised Statutes of Indiana*, 1881.

We are not a little astonished at counsel's grotesque claim that the verification makes the bill evidence.

Even were all the foregoing competent evidence, and bearing the construction counsel place upon it, it would, at most, constitute merely an inference that the Board assessed extra-territorial values.

Against this inference, created by counsel's strained construction of disconnected, irrelevant and fragmentary matters, in and out of the record, stands the clear and emphatic evidence of Governor Matthews, on behalf of the Board, that THE BOARD DID NOT ASSESS A DOLLAR OF VALUE LOCATED OUTSIDE OF INDIANA. *This evidence is uncontradicted;* appellant did not even dare to test Governor Matthews' testimony, by cross-examination.

INSPECTION OF THE ROAD AND HEARING WITNESSES.

Scores of times counsel repeat the statement that the Board assessed appellant's property, (1) without examination and (2) without hearing any witness upon its value. Our only comment on this is to quote the record. Answering a question as to whether the Board examined appellants' property, Governor Matthews said:

"The State Board of Tax Commissioners did not, nor did any member thereof in his official capacity before or during the consideration of the valuation and assessment of the railroad of the plaintiff corporation by the said Board in 1891, make any personal inspection or examination of said property for the purpose of ascertaining the value thereof. *Different members of the Board being personally acquainted with the railroad track and rolling stock of plaintiff in Indiana and its value, we did not deem it essential to make an official examination or inspection thereof.*"

Record, p. 151.

And the law requires that these Commissioners shall be "skilled and competent" men—that is, "skilled" in the knowledge of the property they are to assess, and the values thereof, and "competent"

judges of such values. It is presumed that they were thus "skilled" and "competent."

Sec. 117, *Indiana Tax Law*, 1891.

"H. B. DuBarry, appellant's assistant engineer, testified that he appeared before the Board and presented a statement which 'contained not only facts in addition to those stated in the annual return of the plaintiff for 1891, made to the Auditor of State as required by law, which was then in the hands of the State Board of Tax Commissioners, *but also facts in explanation and correction of said return.*'"

Record, p. 145, 146.

In view of the record we have no further comment on counsel's assertion. Their extraordinary repetition by counsel can not supply the necessary and missing element.

The language of the Supreme Court of Illinois upon this precise question is here extremely pertinent:

"The law does not provide that the return shall be *prima facie* or conclusive evidence of anything. * * It has never been supposed that it is essential to a valid assessment that township or other assessors *shall hear evidence in fixing the taxable value of property. On the contrary, it is believed that they almost uniformly act upon their own knowledge and individual judgment as to its worth.* Such being the uniform course in making assessments when the State Board was created, and it was empowered to fix the value of property belonging to corporations, the General Assembly must have intended that body to act in the same manner."

Railroad Co. v. *Surrell*, 88 Ill. 535.

Case v. *Dean*, 16 Mich. 12, Justice Campbell on this question says:

"The Board has full and complete jurisdiction (not subject to review) over the whole subject * * *and may adopt their own means in reaching the result.*"

In *Sterling Gas Co.* v. *Higby*, 134 Ill. 568, it was decided that:

"The State Board of Equalization is not concluded by the valuation placed upon the property of a corporation by its officers, and that *it is not essential that it should first hear evidence in fixing the taxable value of property, or in changing the value returned by the corporation.* The law gives to the Board the power, and imposes upon it the duty of ascertaining and determining the value, and in fixing it, *the members of the board may act upon their own knowledge and judgment.*"

DEFINITION OF THE WORD "RAILROAD."

9. Appellants attempt to escape the direct and positive testimony of the only person who testified as to what the Board did, by the use of the word "railroad" and "parts of road" in a note, which counsel call a "certificate," to the record of the State Board of Tax Commissioners, in fixing the valuation and assessment of railroad property.

Appellants' position is, that because the Board used the word "railroad" and "parts of road," and because the Century Dictionary and certain other authorities define "railroad" to include the entire road and its equipments, together with its franchises, etc., therefore the Board under oath has certified that it assessed and valued the entire road, its equipment and franchises and every element of value; whereas they could only legally value and assess the "railroad track" and "rolling stock" within the State of Indiana.

This is probably the first time an attempt has ever been made to overthrow the working of a great law by a hypercritical definition of a word

used by the taxing authorities; and the court will probably give such a desperate attempt the attention it deserves.

However, even upon this minute point, appellants' position is not valid.

The whole record of the Board, of which the "certificate" in question is but the conclusion, must be taken together, in construing the meaning of any word or expression used in any part of the record. Thus read, it will be found that the word "railroad," used in the certificate, refers back to an *express definition* of what the Board actually assessed, contained in the first part of the Board's record, to which the "certificate" is attached. There the Board expressly says that the assessment ordered to be spread upon the record (being the assessment assailed in these cases) was the assessment of railroad property denominated "railroad track" and "rolling stock" and "improvements on right of way."

[9] Record p. 107.

Thus the Board's own record cuts the ground from under appellants' in their contention upon the definition of the word "railroad," used in the Board's certificate.

10. But even if this were not true, and no word, except the word "railroad," was used in the Board's record, this would not justify the Court in concluding that the Board thereby meant that they had valued and assessed anything beyond what the law required them to assess and value, namely,

the "railroad track" and "rolling stock" within the State of Indiana; for courts will construe a record in support of the law rather than in derogation thereof.

Especially is this true where there is no unanimity among the authorities as to the meaning of the word; and more especially is it true where the burden of authority gives that definition of the word which would support the action of the Board.

That the burden of authority shows that the definition of the word "railroad" contended for by appellants is not correct, we beg to cite the following definitions of the law dictionaries:

"Railroad may refer to roadbed and track with superstructure; all that forms part of the completed road," * * "may mean all the land, not exceeding a certain amount in width, taken and included in the location—the surface of the land within the location."—Anderson's Law Dictionary.

"The word may fairly be understood as including sidings and branches; but does not necessarily include the rolling stock * * *the meaning depends on the context and general intent.*"—Abbott's Law Dictionary.

"By the word railroad is intended the roadbed and track with its superstructure. All that enters into and forms a complete road."—Winfield's Adjudged Words and Phrases.

"Railroad. A road or way on which iron or steel rails are laid for wheels to run on, for the conveyance of heavy loads in cars or carriages, propelled by steam or other motive power."—Black's Law Dictionary; Rapalje & Lawrence's Law Dictionary.

"Railroad. A road graded and having rails of iron or other material for the wheels of railroad cars to run upon."—Bouvier's Law Dictionary.

Thus it is clear that (1) neither does the law,

as a matter of law, require the assessment and valuation of any values whose *situs* is without the State; (2) nor did the Board, *as a matter of fact*, assess any value situated without the State; and (3) that, even if the law required and the Board adopted a rule for ascertaining the value of the taxable property of railroad corporations within the State, upon the "mileage basis," still this rule would be just, correct and legal.

The law, then, does not discriminate against railroad companies by providing for the importation of extra-territorial values; nor did the Board discriminate against them by importing such values. This is the final specification of appellants as to discrimination.

CASES NOT CONFLICTING WITH THE FOURTEENTH AMENDMENT.

The discrimination clause of the Fourteenth Amendment has been invoked in a number of cases, remarkable for their variety and for the plausibility of their statements; but this court, has as in every of these instances, held that mere classification of property, business and even citizens, made for the purpose of effectuating government, are not covered by the clause of the amendment, behind which the railroad companies of Indiana now seek to shield themselves. We invite attention to a few of these cases:

In *Horn Silver Mining Co.* v. *New York*, 143 U. S. 305, it was held:

"That to levy a tax or assessment upon a foreign corporation doing business within a State, different or heavier than that laid upon domestic corporations, and which also includes business transactions without the State, does not deprive the foreign corporation of the equal protection of the laws."

In Munn against Illinois, 94 U. S. 113, it was held:

"That the act of the legislature fixing a charge upon elevators in the city of Chicago, where none is fixed upon other elevators in the State of Illinois, is not a denial of the equal protection of the laws."

To the same effect is *Budd* v. *New York*, 143 U. S. 517.

"The law of New York regulated elevators only in cities having a population in excess of 130,000."

In *Hall* v. *DeCuar*, 95 U. S., Justice Clifford says, at page 503:

"Substantial equality is the law of the State and of the United States, but equality does not mean identity."

In Missouri against Lewis 101 U. S. 22, it was held:

1. "That a State may establish one system in one portion of its territory and another system in another, provided always that it neither encroaches upon a proper jurisdiction of the United States or abridges the privileges and immunities of citizens of the United States, nor deprives one person of his right without due process of law, nor denies to any person within its jurisdiction the equal protection of the laws in the same district.

2. "By the constitution and laws of Missouri the St. Louis Court of Appeals has jurisdiction in certain appeals from the Circuit Courts of St. Louis and three other adjoining counties. The Supreme Court of the State has jurisdiction from all other

counties of the State. This provision of law does not deny to parties in the former limit the equal protection of the laws by the denial of the right to appeal to the Supreme court of Missouri."

In *Soon Hing* v. *Crowley*, 113 U. S. 703, it was held:

1. "That municipal restrictions imposed upon one class of persons engaged in a particular business which are not imposed upon others engaged in the same business and under like conditions, impairs the equal right which all can claim in the enforcement of the laws.

2. "But a restriction that certain work may not be done within certain times is not open to the objection that it denies the equal protection of the laws, although other kinds of work are not so restricted.

In *Barbier* v. *Connolly*, 113 U. S. 27, it was held:

"That a municipal ordinance prohibiting work in public laundries and wash-houses within defined territorial limits from 10 o'clock at night to 6 o'clock in the morning, notwithstanding other labor may be carried on within the same district during the prescribed hours, does not deprive such person so prohibited of his property without due process of law nor deny to him the equal protection of the laws."

In *Wurtz* v. *Hoagland*, 114 U. S. 606, it was held:

"That the statute of New Jersey providing for the drainage of land upon proceedings instituted by five owners of land in the tract and not objected to by owners of the greater part of the tract, and providing also for the assessment, by the Commissioners, of the expenses upon all the owners does not deny to them the equal protection of the laws."

* * * "Such legislation is not obnoxious to the last clause of the Fourteenth Amendment if all persons subject to it are treated alike under similar circumstances and conditions, in respect both of the privileges conferred and the liabilities imposed."

for evils of that character is to be sought from State Legislatures. Our jurisdiction can not be invoked unless some right claimed under the constitution, laws or treaties of the United States is invaded. The court is not a harbor where refuge can be found from every act of ill-advised and oppressive State legislation.'"

In *Chicago & North Western Railway Company* v. *McLaughlin*, 119, U. S. 566, the railroad company was sued under section 1307 of the Code of Iowa of 1873, which provides that railroad companies shall be liable for injuries sustained by an employe occasioned by or which was contributed to by the negligence of a co-employe, whereas, except as to railroad companies, the employer was not liable for injuries sustained by the negligence of a co-employe, it being claimed that such act denied to railroad companies the equal protection of the laws. It is clear from the record that the injury was occasioned solely by the negligence of the co-employes of plaintiff, unless, indeed, the plaintiff's own negligence contributed thereto, and a verdict for $15,000 was rendered, which was affirmed by a divided court.

In *Hayes* v. *Missouri*, 120 U. S. 68, the statute of Missouri provides that in capital cases in all cities having a population of over 120,000, the State shall be allowed to peremptorily challenge fifteen talesmen, while in all other instances the State was only permitted to challenge eight; held that such act or the action of the Court thereunder was not a denial of the equal protection of the laws.

In *Penbina Mining Co.* v. *Penn.*, 125 U. S. 181, it was held:

1. That corporations are not citizens within the meaning of the Constitution, but that they are persons within the meaning of section one of the Fourteenth Amendment.

2. The State may require of a foreign corporation seeking admission within its limits such conditions as it may choose, and will not thereby deny the equal protection of the laws.

In *Dow* v. *Beidelman*, *Ib.*, 680, the State of Arkansas had passed a law fixing the rate for carrying passengers at eight cents per mile on lines of roads fifteen (15) miles in length; at five cents per mile on lines of road over fifteen and less than seventy-five miles in length, and three cents per mile on lines over seventy-five miles in length; held that such act was constitutional, Mr. Justice Gray saying, at page 691:

"It is equally clear that the plaintiffs in error have not been denied the equal protection of the laws. The Legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the amount of the business which they have done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried or of gross or net earnings during a previous year, or according to the simpler or most constant test of the length of the line of railroad is a matter within the discretion of the Legislature. If the same rule is applied to all railroads of the same class there is no violation of the constitutional provisions securing to all the equal protection of the laws."

In *Powell* v. *Penn*, 127 U. S. 678, it was held: That the act of Pednsylvania prohibiting the

manufacture of oleomargarine is not in violation of the Fourteenth Amendment to the Constitution. It does not deprive the manufacturers of property without due process of law, nor deny to them the equal protection of the laws.

The list might be almost indefinitely extended. The above will suffice to show how inapplicable the discrimination clause of the Fourteenth Amendment is to the Indiana Tax Law of 1891. We have no criticism for counsel for vigorously urging every possible gronnd on which there is even the faintest possibility of saving a point for their clients. But in view of the overwhelming and repeated authority upon this question, the contention of appellant does, indeed, seem little less than vexatious. We have diligently searched for authority in support of their contention and have not been able to find one, which appears to us to reasonably go to the point.

We shall now consider some of the cases which appellants in the court below seemed to think, supported their proposition that the railway companies of Indiana had been subjected to invidious discrimination by the Tax Law of 1891.

CASES CITED BY THE RAILROAD COMPANIES.

1. Practically the only cases relied on are the celebrated San Mateo and Santa Clara cases, reported in 13th and 18th Federal Reporter and examined in this brief under the discussion of "due process of law."

We shall examine them at this point, with reference only to the question immediately under discussion, namely, the alleged denial by the law of the equal protection of the laws.

We adopt with pleasure the language of Mr. Justice Field and Judge Sawyer in these cases. We assert, with a confidence and emphasis which we seldom use, that every word of these opinions, directed to this particular question, supports the Indiana Tax Law of 1891. We select the language used by the railroad companies in the argument below, believing that such language would be most favorable to their views.

"By equal protection of the laws is meant equal security under them to every one on similar terms—in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances."

County of San Mateo v. *S. P. R. R. Co.*, 13 Federal Reporter, p. 733.

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of general legislation, arising from the different conditions of persons from their means, business or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, from a *carefully devised scheme to produce such inequality;* or a scheme, if not so devised, necessarily producing that result. Absolute equality may not be attainable, *but gross and designed departures from* it will necessarily bring the legislation authorizing it, within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position, that unequal taxation is not within the scope of its prohibitory clause, would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation leveled against special classes has been the fruitful means of oppression, and the cause of more commotions and disturbance in society, of revolutions and insurrections than any other cause in the world. It would, indeed, as counsel in the San Mateo case ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read as contended it does in law: 'Nor shall any State deprive any person of his property without due process of law, except it be in the form of taxation, nor deny to any person within its jurisdiction the equal protection of the laws, except it be by taxation.' No such limitation can be thus engrafted by implication upon the broad and comprehensive language used. The power of oppession by taxation, without due process of law, is not thus permitted; NOR THE POWER BY TAXATION TO DEPRIVE ANY PERSON OF THE EQUAL PROTECTION OF THE LAWS."

County of Santa Clara v. *R. R. Co.*, 18 Fed. p. 399.

This and all the language of the San Mateo and Santa Clara cases we unqualifiedly endorse. It

applies to the Indiana tax law, only by way of sustaining it. By the Indiana tax law, all persons alike have some adequate notice; all alike have some sufficient hearing; all alike are subjected to the same rate of taxation; to all alike, the same rules of valuation apply.

2. But the Constitution of California to which the San Mateo and Santa Clara cases were directed upon this particular question did discriminate against railroad companies in the most undisguished, and oppressive and flagrant form. It provided that in assessing property

(*a.*) All *mortgages and like instruments are deducted* from all property, except as to railroads and other quasi-public corporations.

(*b.*) But railroads, etc., are assessed at their total value, and the amount of *their mortgage indebtedness was not deducted.*

Mr. Justice Field, on p. 735–6 described its workings as follows:

"Whenever an individual holds property encumbered with a mortgage, he is assessed at its value, after deducting from it the amount of the mortgage. If a railroad company holds property subject to a mortgage, it is assessed at its full value without any deduction for the mortgage; that is, as though the property were unincumbered. The unequality and discriminating character of the procedure will be apparent by an illustration given by counsel. Suppose a private person owns a farm which is valued at $100,000.00, and it is incumbered with a mortgage amounting to $80,000.00; he is in that case assessed at $20,000.00, if the rate of taxation be 2 per cent. he would pay $400.00 taxes. If a railroad corporation owns an adjoining tract worth $100,000.00, which is also incumbered by a mortgage for $80,000.00, it would be assessed for $100,000 00, and be required to pay

$2,000.00 taxes, or five times as much as the private person. There is here a discrimination too palpable and gross to be questioned and such is the nature of the discrimination made against thd Southern Pacific Ry. Co. in the taxation of its property."

San Mateo Case, 13 Federal Reporter.

To present the distinction between the provisions of the California Constitution and the law now before this court in its clearest light, we again use the device of parallel columns:

CONSTITUTION OF CALIFORNIA (1880).

a. All property is subject to taxation, except such as the laws of the United States exempts.

Sec. 1 Art. 13, Con. Cal.

b. Mortgages and the like shall be considered an interest in the property and the amount thereof shall be deducted from the value of the property and the owner assessed on the value in excess thereof "*except as to railroads and other quasi-public corporations.*"

Sec. 4 Art. 13, Con Cal.

c. The property of railroads, corporations, etc. "*shall be assessed at their actual value.*"

Sec. 10 Art. 13, Con. Cal.

REVENUE LAW OF INDIANA (1891).

a. "All property within the jurisdiction of this State, not expressly exempted, shall be subject to taxation."

Sec. 3 Ind. Tax Law, 1891.

b. All mortgaged property, personal and real, is deemed the property of the person having possession, and

All property shall be assessed at its "true cash value."

Secs. 27-28 *et. seq.* Ind. Tax Law.

c. Property of railroads intrinsically *local*, is assessed by the local authorities; and property intrinsically *general* is assessed by the general authority; *but all property both local and general, is assessed at* "*its true cash value.*"

Secs. 34 and 37 Ind. Tax Law, 1891.

We deem no comment on the difference between these provisions necessary, although the

railroad companies before this Court, insist that the provisions of the Constitution of California and those of the Indiana tax law of 1891, above set out, are identical, and equally obnoxious to the same objections of discrimination against them. We cite the language of the San Mateo and Santa Clara opinions addressed to the above provisions of the California Constitution upon the question of discrimination, as authorities powerfully endorsing the Indiana law.

3. We adopt and endorse the language of this Court in the following cases cited by appellant:

Yeck Wo v. *Hopkins*, 118 U. S. 367–9.
Missouri v. *Lewis*, 101 U. S. 31.
People v. *Weaver*, 100 U. S. 539.
Mining Co. v. *Penn.*, 125 U. S. 181–9.
Lent v. *Tillson*, 140 U. S. 316.
Railway Co. v. *Beckwith*, 129 U. S. 26.

The facts and law in these cases, under which the protection of the discrimination clause of the Fourteenth Amendment was invoked, are entirely foreign to the facts and law in the case at bar; but the general language used, in definition of the Fourteenth Amendment, brings Indiana law so entirely within the requirements of that amendment, that, *although cited by appellant*, we adopt and endorse it as embracing and approving the law, which we are here defending.

Witness the following language of Mr. Justice Field in delivering the opinion of the Court in *Mining Co.* v. *Penn.* 125 U. S. on p. 188–9:

"The inhibition of the amendment, that no State shall deprive any person within its jurisdiction of the equal protection of the laws, was designed to prevent any person or class of persons from being singled out *as a special subject for discriminating and hostile legislation.* The equal protection of the laws which these bodies (corporations) may claim, *is only such as is accorded to similar associations within the jurisdiction of the State.*"

Or the language of Mr. Justice Bradley, in *Missouri* v. *Lewis*, 101 U. S., on p. 31:

"We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its methods of procedure for New York City and the surrounding counties, and the common law and its methods of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the law. If every person residing or being in either portion of the State, should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. *It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies.*"

It were presumption to occupy more time in quoting the language of opinions cited by the railway companies to sustain their positions, which, on the contrary, sustain the positions of the State.

TO RECAPITULATE, ON EQUAL PROTECTION OF THE LAWS.

1. The Fourteenth Amendment had no reference, in its historical origin, or in the origin of the principles there crystallized, to corporations or taxation. It covers them only by construction.

2. Thus covering them, "the equal protection of the laws which these bodies may claim is only such as is accorded to similar associations within the State." Were this not true, our entire system of laws would fail. Illustrations are practically numberless.

3. That all owners, operators or constructors of railroads in Indiana have precisely the same rights and duties and burdens under the law, is not denied. That all persons similarly situated receive the same benefits and burdens of the law, is not denied.

4. The only difference between the procedure applied to railroad owners, operators and constructors, and that applied to all other property owners in Indiana, is, that, with reference to their "railroad track" and "rolling stock," railroad owners, etc., are originally and finally assessed by the supreme taxing tribunal; whereas, other property owners are assessed by inferior tribunals and may appeal to the supreme tribunal.

5. Even in the most vital and important cases, involving property, liberty and life, it is not necessary to give all cases the right of appeal. Some may be granted it and others denied it. Much

less is it a necessary right in taxation, which, at best, must be a summary proceeding. The railroads are, by this law, placed before the very body to whose judgment they demand the right of appeal. Appeal is not a constitutional right, and is not contemplated by the equality clause of the Federal Constitution.

6. The law does not require, permit or result in the assessment of values belonging and existing outside of Indiana. On the contrary, it, in terms, repeatedly restricts the taxation to the true cash value of property exclusively within the State. The schedules required of the railroads, are merely witnesses, throwing light on what the true cash value really is, are designed to aid the State Board of Tax Commissioners to a just conclusion and are admirably adapted to that end.

7. Neither did the Board, as a matter of fact, assess a single cent of value situated outside of Indiana. On the contrary, the only testimony on this subject is clear and pronounced, that the Board did not assess any value whatever, located outside of Indiana, or in any way import a cent of such value into this State.

III.

INTERSTATE COMMERCE.

Repecting interstate commerce, two propositions are advanced:

(*a.*) The law itself permits and requires the taxation of interstate commerce or the instruments thereof.

(*b.*) The board, as a matter of fact, did value and assess the proceeds and instruments of interstate commerce.

We shall discuss them in their order.

The allegations of appellant's bill upon these propositions, are as follows:

"Plaintiff further avers that the lines of railway of plaintiff corporation extend into or through the States of Pennsylvania, Ohio, Indiana and Illinois, and that a very large proportion of all of the traffic and transportation of plaintiff corporation, to-wit: about seventy-five per cent. thereof, consists of interstate traffic, transportation and commerce; add that only a small proportion of plaintiff's traffic, transportation and commerce, to-wit: Only about twenty-fiue per cent. thereof is traffic, transportation and commerce originating and terminating within said State of Indiana. That said assessment and valuation of the 'railroad track' and 'roling stock' of plaintiff corporation, as made by said State Board of Tax Commissioners, was made by estimating said property as having a taxable value in proportion to the entire earning capacity of plaintiff corporation as the owner and operator of an interstate railway engaged in interstate traffic and transportatian and as measured by its earning capacity and power as a carrier, both of commerce beginning and ending wholly within the State of Indiana, and all interstate commerce. That the true cash value of said 'railroad track' and 'rolling stock' of plaintiff corporation, if reckoned and computed on any basis which did not include the earning power from interstate commerce, would be very greatly less than the assessment and valuation placed upon said 'railroad track' and 'rolling stock' by said State Board of Tax Commissioners, and far less than the assessment and valuation upon which the plaintiff has paid and tendered the amount of taxes hereinafter mentioned and set forth. That the action of said State Board of Tax Commissioners in making said assessment and valuation of said 'railroad track' and 'rolling stock' upon the basis of its earning capacity as a carrier of interstate commerce was not and could not be authorized by any valid and

and constitutional law of the State of Indiana, and was *ultra vires* of the State of Indiana and was beyond the jurisdiction of said State Board of Tax Commissioners and wholly void, because said assessment and valuation is not based upon and does not represent the true case value of said property, but was, and is, an attempt to tax interstate commerce transported by plaintiff over its said railway tracks in Indiana by assigning fictitious and arbitrary values to said property in the State of Indiana far above and in excess of the true cash value thereof. Because said act of March 6, 1891, in so far as it permits, or purports to permit, or require the taxation of the 'railroad track' and 'rolling stock' of railroad corporations engaged in the transportation of both State and interstate commerce upon an assessment and valuation determined by and based upon the amount of their gross and net earnings derived from all their traffic and transportation, both that originating and ending wholly in Indiana, and their interstate traffic and transportation is unconstitutional and void, because in violation of and in direct conflict with section 8, article I, of the constitution of the United States. Because to impose a tax upon property according to its valuation as determined by and based upon interstate commerce transported by that property is, in effect, to tax interstate business and is a tax upon interstate commerce."

The only evidence whatever, in the record, tending to support the above allegations, is the note (which counsel call a "certificate") of the State Board of Tax Commissioners, attached to their report of 1891, as follows:

"Making liberal allowances for all proper deductions, the State Board of Tax Commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set out In arriving at the basis for the estimate of said values, the Board has considered the cost of construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads,

and all other matters appertaining thereto that would assist the Board in arriving at a true cash value of the same."

Record, p. 110.

I.

DOES THE LAW ITSELF PERMIT OR REQUIRE THE TAXATION OF INTERSTATE COMMERCE.

The only language of the law which might, by the severest possible stretch of logic, lend even a shadowy foundation to these propositions, is the description of the schedules required to be returned by railway companies, by sections 83 and 85.

These schedules require a full and correct, detailed inventory of all the "rolling stock" belonging to or leased, hired, used or operated by such company, specifically naming each variety of "rolling stock," together with its "true cash value," the number of miles of main track on which such "rolling stock" is used in Indiana; the property denominated "railroad track," giving length of the main and side tracks, showing the proportions in each county and township and the total in the State; the amount of capital stock authorized, the amount of capital stock paid up, its market or actual value; all indebtedness except for current expenses, etc.

Appellants' argument is that the Board must necessarily value and assess whatever is required to be reported in the schedules, and therefore,

the Board is required to value and assess all the "rolling stock," all the main track, etc., all the capital stock, etc., of railway corporations, as estimated by its gross and net earnings; that as the railroad is an interstate railway, and most of the "rolling stock" used in interstate commerce and the larger part of its earnings derived therefrom, and the value of its capital stock determined by interstate business; therefore, to value and assess these items would be to directly tax and regulate commerce between the States; that to consider them, in fixing the value of the property, located exclusively within the State, so as to increase the valuation of such property, would also be a taxation of interstate commerce, indirect, perhaps, but equally burdensome; and that the certificate of the Board above given proves that, as a matter of fact, they did assess such elements.

Against this position both reason and authority are direct and decisive.

1. It does not follow that, because the schedules, which the law requires the railway companies to return, must include all of these items, therefore the Board must value and assess them. As has been shown, in our discussion of "importation of values," *supra*, they are merely criteria of value, provided by the law for the guidance of the commission in determining what the "true cash value" of "railroad track" and "rolling stock," within the State of Indiana, really is.

These schedules merely require the railroad companies to become their own witnesses before

the Board as to the "true cash value" of their property, properly taxable in this State. These schedules permit them to give their net opinion as to the value of their property, but also require them *to give facts upon which their opinion is founded* —facts throwing floods of light upon what the "true cash value" of their propety really is.

A railroad's capital stock, authorized and paid up, its indebtedness, and the market or actual value of these, is the testimony of that shrewdest of experts—the market—on the value of the road as a whole, and, therefore, indispensable testimony on the value of its most important parts.

The road's terminals, total rolling stock, gross and net earnings are equally indispensable aids in that most difficult problem—the ascertainment of the proportion of constantly moving "rolling stock," justly taxable within the State, or the true cash value of the "railroad track" in Indiana.

They tell the volume of business, and the extent to which the road is used.

If the Panhandle route is used more and earns more than another, it is a fair presumption that it is a better route—safer, more direct, better road bed, through richer and more populous districts—and, therefore, its "railroad tack" is far more valuable than an unused and bankrupt line. Business sagacity may have something to do with it, but behind all its success and dividend-earning power are its natural advantages.

Across the Ohio River, uniting Louisville with Indiana and the North, is a great bridge, over

which scores of trains pass daily. A few miles from it are mighty stone abutments and tremendous stone towers planted in the river's bed, and, thrown partly across, is the great frame of another bridge—better, stronger, more expensive than the first. But, before it was finished, it was found that a mistake had been made. As compared with its cheaper rival, its location was poor, its connections difficult, its probable earning power low.

Appellant's position is, that that part of the unfinished bridge which is built, should be assessed more than a similar part of the other bridge, because it cost more, regardless of utility, location, connection or earnings. If you consider its earnings, says appellant, you tax the sagacity and enterprise of its owners; and, as all of its earnings are from interstate commerce, if you consider its earning power, in estimating its true cash value, you are taxing commerce between the States.

The consideration of the items scheduled does not, therefore, mean the taxation of those items: their consideration does not mean the taxation of interstate commerce. Without them the true cash value of the rolling stock and railroad track could never be known.

Even were the law capable of appellant's construction, it is, to say the very least, equally capable of the construction that these items of information were designed by the Legislature to be CRITERIA OF VALUE by which the Board could ascertain the

"true cash value" of the property, properly taxable in Indiana. But it seems to us that the latter construction is the *only* reasonable one, and the law is not, from any point of view, capable of appellant's construction upon this point.

2. Appellent's argument proves too much; for if the "railroad track" and "rolling stock" must be taxed at its "true cash value," it is too plain for argument that its "true cash value" could not be ascertained by considering it as *a State road only*, engaged in State traffic exclusively, unmindful of the fact that it is an interstate road, engaged largely in interstate commerce. According to appellant's position it would escape taxation altogether; because, to tax it, or any portion of it, would be to tax an instrument of interstate commerce.

Take the case which appellant, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, presents in its bill—a road running through five States, with seventy-five per cent. of its entire business interstate commerce; if appellant's position is correct, it escapes taxation on seventy-five per cent. of its value in each State through which it passes, because its "railway" and "rolling stock" being devoted to interstate commerce to the extent of seventy-five per cent. of its business, they must be exempt from taxation to that extent by every one of these States. This is the conclusion of appellant's interstate syllogism, which is a choice sample of what logic calls *reductio ad absurdum*.

3. Even if the law required the taxation of any property of appellant within the State of Indiana, used exclusively in interstate commerce, it would not be a violation of the commerce clause of the Federal Constitution.

The purpose of the adoption of this clause, as well as the repeated construction it has received from this Court, settle the proposition that the right of a State to tax property within its borders can not be denied, although such property may be an instrument of, and engaged in, interstate commerce.

"A very useful key to the construction of a Statute or Constitution," says Mr. Justice Miller in his work on the Constitution, "is to inquire what was the evil to be removed and what remedy did the new instrument propose; so that when any question arises requiring a judicial construction of any of its clauses, it is important to go back and ascertain the evil that was intended to be remedied."

The loose notions which seem to prevail upon the scope of the interstate commerce clause of the Federal Constitution, render the method suggested by Mr. Justice Miller very pertinent in the present controversy.

What was the evil to be remedied by the commerce clause of the Federal Constitution?

The Articles of Confederation lacked an interstate commerce clause. The theory of those Articles was that every State was a separate and independent sovereignty. Therefore, every State tried to raise its revenue by laying duties on imports from other States, as well as foreign nations, just

as the Federal Government lays a tariff on foreign imports. This led to retaliation, until, around each State, an impassable barrier to trade was erected, commerce between the States practically ceased, and the theory that we were a single and united government, disappeared in the hostile commercial legislation of the various States.

Articles imported from one State to another were themselves taxed before they were permitted to be sold in the importing States; the vessels on which they were brought were compelled to pay duties before entering the ports of a sister State; numerous devices were resorted to to burden interstate trade.

These evils led to the adoption of the interstate commerce clause of the Federal Constitution. The idea of the framers of the Constitution was to prevent tariffs being levied by one State upon importations from another State. By inferential construction, this clause has been extended so as to cover *any* hostile burden laid by one State upon commerce with another, under whatever form. The only requirement is that this burden shall discourage and hamper commerce between the States.

But to prevent a State from taxing property whose situs is within its limits, or personal property, if found within its borders, was never contemplated by the framers of the Constitution; no such evil existed as to warrant that construction, and such a position has never been taken by any court.

4. The interstate commerce clause of the Federal Constitution is violated only when burdens are laid upon the commerce itself, and trade between the citizens of different States, discouraged. Any law which lays burdens upon the articles bought and sold, or on the privilege of transporting them from one State to another, or on the charge made by the carrier, so that the effect will be to discourage interstate trade, is an interference with interstate commerce. But there must be an element of hostility to the products of other States, either actual or necessarily resulting.

As the Supreme Court of the United States so lucidly said in *Sherlock* v. *Alling*, 93 U. S. on p. 102 (and frequently quoted in interstate cases), drawing the distinction between legislation which actually conflicts with the interstate clause of the Federal Constitution and that which does not:

> "Upon an examination * * it will be found that the legislation adjudged to be invalid, imposed a tax upon some *instrument* or *subject* of commerce or exacted a license fee from parties *engaged in commercial pursuits* or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases, the legislation condemned operated directly upon commerce, either by way of tax upon its business, license upon its pursuit in particular channels or conditions for carrying it on." (The italics are the Court's.)

Therefore, a law which requires an interstate railway to bear its share of the public taxes upon property within the limits of the State is not, and

has never been, held an interference with interstate commerce. Otherwise such a railway would be exempt from sharing its proportion of the public burdens, although it is only by the indulgence of the State that such a corporation lives at all.

To tax such property could not discourage trade between the citizens of different States; could not increase the price of commodities sold by the citizens of one State to the citizens of another State. No burden would thereby be laid upon articles transported, nor the privilege of transporting them. The only thing done is to compel the railway company to pay its share of the public burdens for its property within the State, under whose favor alone it lives and by whose laws it is protected; and the fact that the railway company's tracks run through other States, and that its "rolling stock," laden with interstate commerce, passes to its destination in another State, can not affect the question.

To answer that this interferes with interstate commerce, because the railway company will ultimately place the amount of those taxes on the charges it makes for interstate freight, is to destroy altogether the taxation of the property of an interstate carrier; because it could make the same answer with reference to any tax whatever placed upon any of its property, all of which would be instruments of interstate commerce. Even if such answer were true, however, it would be the railway itself which interferes with interstate commerce instead of the tax law; for the railway company

need not charge the taxes placed upon its property to those whose freight it carries from State to State, unless it so desires. The only logical effect of taxation is to reduce the company's profits. If, instead, the company increases the price of its charges for carrying interstate freight, that is its willful act, and it becomes the violater of interstate commerce instead of the State.

It must be remembered that the tax under discussion is not on the freight carried; not on the privilege of carrying it; not on the charge for carrying it; but the tax is on the "true cash value" of the property of the company known as "railroad track" and "rolling stock;" and this "true cash value" is only ascertainable by considering this "railroad track" and "rolling stock" as parts of an interstate railway, carrying interstate commerce.

5. No case ever decided that such a tax was an interference with interstate commerce; but many cases decide that much more direct interference with interstate commerce than the case at bar, do not violate the commerce clause of the Federal Constitution, and all cases declare that States may tax property whose situs is within its borders, whether engaged in interstate commerce or not.

In a very late case, *Pullman Car Company* v. *Pennsylvania*, 141 U. S. 18, the tax assailed was on the capital stock of the Car Company, proportioned to the number of miles of railroad over which its cars ran in Pennsylvania to the total

number of miles of railroad over which the cars ran everywhere. The company, adopting precisely the same course of reasoning adopted by appellant in the case at bar, contended that the capital stock represented its property and its earnings; that the tax, therefore, was a tax on its property and its earnings; that its property was engaged in and its earnings derived from interstate commerce: and that the tax was, therefore, a tax upon interstate commerce. But this Court held the tax valid. (pp. 22-3-5.) The Court said:

"*It is equally well settled that there is nothing in the Constitution or laws of the United States* WHICH PREVENTS A STATE FROM TAXING PERSONAL PROPERTY EMPLOYED IN INTERSTATE OR FOREIGN COMMERCE, LIKE OTHER PERSONAL PROPERTY WITHIN ITS JURISDICTION." And witness the following pointed language of the Court on pp. 22–3:

"For the purposes of taxation, as has been repeatedly affirmed by the Court, personal property may be separated from its owner; AND HE MAY BE TAXED ON ITS ACCOUNT AT THE PLACE WHERE IT IS, ALTHOUGH NOT THE PLACE OF HIS OWN DOMICILE, AND EVEN IF HE IS NOT A CITIZEN NOR A RESIDENT OF THE STATE WHICH IMPOSES THE TAX."

The entire opinion precisely covers the case at bar. Nor can its force be broken by answering that it is an excise tax. On p. 25 the Court says:

"The tax now in question is not a license tax or a privilege tax; it is not a tax on the business or occupation or the right of transit of persons or property through the State to other States or countries. The tax is imposed equally on corporations doing business within the State, whether domestic or foreign, and

whether engaged in interstate commerce or not. The tax on the capital of the corporation on account of property within its State is, in substance and effect, a tax on that property."

The same decision is made in *Pullman Car Company* v. *Heyward*, 141 U. S. 36, and the Kansas tax law, there upheld, is strikingly like our own.

In *Maine* v. *Grand Trunk Railway Co.*, 142 U. S., p. 217, decided only a year ago, the defendant was a Canadian corporation, with its principal office in Montreal and its road extending through the Dominion, New Hampshire, Vermont and Maine. The State of Maine taxed all railroad corporations doing business in the State, and estimated this tax by dividing the gross transportation receipt of the entire system by its entire length of miles, fixing a rate on this result and multiplying the result by the number of miles within the State of Maine. The statute denominated this tax to be an "excise tax for the privilege of exercising its franchises," but of course can not affect the question of interference with interstate commerce. The fact that it was an excise tax would be pertinent to the question of due process of law. But you may not abridge interstate commerce by an *excise* tax any more than by an *ad valorem* tax. This law was assailed with great vigor as an interference with interstate commerce and a violation of the interstate commerce clause of the Federal Constitution.

This Court upheld the law, and, upon this question, used the following language:

"The Court below held that the imposition of the taxes was

a regulation of commerce, interstate and foreign, and therefore in conflict with the exclusive power of Congress in that respect;

* * * this ruling was founded upon the assumption that a reference by the statute to the transportation receipts, and to a certain percentage of the same * * * was, in effect, the imposition of the tax upon such receipts, and therefore an interference with interstate and foreign commerce. *But a resort to those receipts was simply to ascertain the value of business done by the corporation, and thus obtain a* GUIDE TO A REASONABLE CONCLUSION as to the amount of the excise tax which should be levied; *and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation.* If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended.

* * * There was no levy by the statute on the receipts themselves, either in form or in fact. They constitute, as said above, simply the *means of ascertaining the value* of the privilege conferred."

In *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365, the tax assailed was provided for by an ordinance of the city of East St. Louis. The ferries, having their situs in Illinois and transporting and engaged exclusively in interstate commerce were required to pay a tax to the city. The boats of the Wiggins Ferry Company were registered under United States laws and inspected by Federal authority. It was argued that this tax was an interference with and regulation of interstate commerce. But the court held that it was not. P. 373–4:

"The levying of a tax upon vessels * * * by the State within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution of the United States."

In *Mayre* v. *Railroad Company*, 127 U. S. 117, the law assailed provided that the gross receipts of railroad companies should be taxed in proportion that the length of the track within the State bore to the total length of the track. *This part of the law was approved.* The act also provided that the "rolling stock" of any corporation, found in the State, should be taxed. The Baltimore & Ohio Railroad Company operated "rolling stock" over leased lines in the State of Virginia. The tax was assessed against this rolling stock. It was assailed as a violation of the interstate commerce clause of the Federal Constitution, because such rolling stock was used in interstate commerce. *The court held that the State had the power to tax such rolling stock;* but that, in the act under discussion, the State had failed to do so, because the act under discussion confined itself to the rolling stock of railroads within the State. P. 123 the court said:

"The fact that they were employed as vehicles of transportation in the interchange of interstate commerce would not render their taxation invalid."

In *State Tax on Railway Gross Receipts*, 15 Wall. 284, the tax in question was on the total income of railroad companies. It was resisted upon the ground that most of the income was from receipts from interstate commerce; and that such a tax was, therefore, a burden on interstate trade. But the Court held that the freight itself was not taxed; that only the fruits of carrying it was taxed; that no burden was imposed upon trade; that its only effect was to reduce the profits of the

carrier. Upon the general subject of interstate trade the Court on p. 293 says:

"It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution. We think it may be safely asserted that the States have authority to tax the estate, real and personal, of all their corporations, including carrying companies, precisely as they may tax similar property when belonging to natural persons, and to the same extent. We think, also, that such taxation may be laid upon a valuation, or may be an excise, and that in exacting an excise tax from their corporations, the States * * * may demand a graduated contribution, proportioned either to the values of the privileges granted, or to the extent of their exercise or to the results of such exercise. No mode of affecting this, and no forms of expression which have not a meaning beyond this, can be regarded as violating the Constitution. A power to tax to this extent may be essential to the healthy existence of the State governments, and the Federal Constitution ought not to be so construed as to impair, much less destroy, anything that is necessary to their efficient existence."

This case is questioned, though not expressly overruled, in *Philadelphia Co.* v. *Pennsylvania*, 122 U. S. 326.

In *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, the tax in question was based upon a valuation "equal to the aggregate value of the shares of the company's capital stock," and certain other elements of value, and proportioned according to the ratio that the company's lines within the commonwealth bore to the length of all of its lines. Although the Western Union Telegraph Company was engaged in interstate commerce, still this tax was upheld by this Court.

In *Massachusetts* v. *Western Union Telegraph Co.*, 141 U. S. 40, the same decision was made, and the Court said:

"The tax, though nominally upon the shares of the capital stock of the company, is, in effect, a tax upon that organization on account of the property owned and used by it in the State of Massachusetts; *and the proportion of the length of lines in that State to the entire length throughout the whole country is made the basis for ascertaining the value of that property. Such a tax is not orbidden * * * by the commerce clause of the Constitution.*"

The above cases are so clear and authoritative that further citation is deemed unnecessary.

CASES APPARENTLY TO THE CONTRARY.

6. An examination of the cases cited by appellants in the court below, and which we presume we will find cited in this court, shows that not one of them is in point.

The first case cited in support of appellants' position on interstate commerce is the case of "*State Tax on Foreign Held Bonds*," 15 Wall 319. In this case the question of interstate commerce does not arise at all. The law pronounced in the quotation which appellant makes, that "the power of taxation * * * is limited to subjects within the jurisdiction of States," is elementary, and is not denied. It can bear in no way upon appellants' position concerning interstate commerce. That case is not, even by implication, in point upon appellant's position.

In *Ratterman* v. *Western Union Telegraph Co.*, 127 U. S. 411, the tax in question, was upon the gross receipts of the Western Union Telegraph Company, including receipts for *exclusively interstate business*—in short, *a tax upon the receipts of interstate commerce.*

There can be no parallel between the facts and the law in that case and the law and the facts in the case at bar. In the case at bar, the law does not require taxation of the receipts of the railroad company, gross or net, interstate or local; and the single point with reference to the present controversy, decided in the Ratterman case, was the familiar proposition, about which no lawyer now contends, that a State can not tax the receipts of interstate commerce.

In *Leloup* v. *Port of Mobile*, 127 U. S. 640, the tax assailed was a *license upon the privilege of* doing telegraph business at the Port of Mobile. The Telegraph Company was engaged in interstate commerce, and this license was a *tax on the privilege of carrying on such interstate commerce.* But that is not the law nor the fact in the present case. As illustrative of what is an interference with interstate commerce and what is not such an interference, we repeat the language of Mr. Justice Bradley, quoted by appellant's counsel, *and also the language immediately following that quotation, which counsel fail to quote.* The Court says:

"In our opinion, such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid

State or not. Of course this was a direct burden upon interstate commerce itself, upon the privilege of conducting interstate traffic, and void as to such cars as ran through the State into other States.

In *Fargo* v. *Michigan*, 121 U. S. 230, the tax in controversy was a direct tax upon the earnings immediately derived from interstate commerce.

In *Lyng* v. *Michigan*, 135 U. S. 161, the question was to the validity of a license tax on a liquor agency, engaged exclusively in interstate commerce, for carrying on its business. It would have been competent to tax its property, although engaged in interstate commerce; but not to tax the privilege of carrying on its business.

In *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, the tax under consideration was a tax upon the capital stock of the Ferry Company laid by the State of Pennsylvania, although the Ferry Company was a New Jersey corporation, engaged *exclusively* in interstate commerce. The capital stock taxed was not proportioned to the amount of property owned by the Ferry Company in Pennsylvania, but was an omnibus tax upon the entire capital stock. As its capital stock represented the company's entire assets, including earnings, franchises, and all business and property wherever situated, or from whatever source derived, the tax was, of course, a tax upon its property in New Jersey and a tax upon the receipts of interstate commerce. But had the tax been upon the boats themselves, found

in Pennsylvania, and their value ascertained by considering them a part of a system of interstate commerce, the tax would undoubtedly been held valid as this Court plainly intimates. But inasmuch as it was an undoubted undisguised and *declared* taxation upon the property both without and within the State, including its earnings from interstate commerce, all inseparably mingled, it was, of course, invalid.

In *Lehigh Valley Co.* v. *Pennsylvania*, 145 U. S. 192, the tax was on the receipts for business within the State; and the sole question was whether transportation from point to point within the State, but passing through another State in transitu, was interstate commerce. Counsel could not have examined this case fully or he would not have ventured to have cited it as in point here.

In *Indiana* v. *Pullman Co.*, 16 F. R. 193, the tax was upon gross receipts derived from both State and interstate commerce.

These are all of the cases which appellants cited in the court below. And the above statement of the facts in those cases, demonstrates how very far from being in point, each and all of them are.

To conclude this branch of our discussion.

First. The law does not require the taxation of the proceeds or instruments of interstate commerce nor of the privilege of carrying on interstate commerce so as to abridge the same; the schedule required to be returned is merely a *criterion of value*, for the guidance of the Board in

arriving at the "true cash value" of "railroad track" and "rolling stock" within the State of Indiana; and the method of valuation described in section 80, is a proper, just and legal method, in no way resulting in the taxation of the instrument or proceeds of interstate commerce, so as to abridge or regulate the same.

Second. Even if appellant's railway and "rolling stock" are engaged in interstate commerce, this fact does not prevent the State from taxing its "railroad track" and "rolling stock" within the State of Indiana, for

Third. It is settled law that a State may tax property whose situs is within its borders, whether engaged in interstate commerce or not. The fact that the situs of the property assessed was in Indiana has never been questioned, nor could it be. There is not a syllable of evidence in the record that the situs of the property valued and assessed by the Board was in other States. On the contrary, the Hon. Claude Mathews positively testified that no value whatever outside the State of Indiana, was valued and assessed by the Board. And had there been no evidence on this point, the allegations of the bill in this behalf would have failed of proof. In addition to all this, it is clear that the "*railroad track*" was within the State of Indiana; and the authorities which we have cited above expressly decide that *personal property* may be taxed wherever it is found; and "rolling stock" is personal property.

Fourth. If it be said that the situs of the personal property of a corporation is at the place where it was chartered, we reply that, by the allegations of appellant's own bill, it is a consolidated company, organized under the laws of several States, among which is our own State; and such a corporation is, in law, as much an Indiana corporation as the corporation of any other State, being incorporated under our laws, and being composed, in part, of railways originally chartered by our State.

Tomlinson v. *Branch*, 15 Wall. 460.
Branch v. *City*, 92 U. S. 677.
Green County v. *Conness*, 109 U. S. 104.

Being as much an Indiana corporation as that of any other State, the situs of its property is in Indiana as fully as it could be in any other State.

Fifth. The right of a State to tax the property of its own corporation has never been questioned.

Sixth. But if it were not an Indiana corporation in any sense, it would still have the undoubted right to tax property whose situs was within its borders; *and there was no evidence to show that the Board, as a matter of fact, valued and assessed any property whatever beyond the borders of the State of Indiana; and the law itself plainly confines the Board to the valuation and assessment of property within the State.*

IV.

ACQUIESCENCE BY THE COMPANIES IN THESE PROVISIONS.

The Indiana tax law of 1891, as to the features here assailed, is more than twenty years old, and has, for this long period, been acquiesced in by all the citizens of Indiana, including her corporations. The procedure provided by the law of 1891 is almost identically the same as that provided by the tax law of 1872. Appellant never thought of questioning that law. No one ever thought of such a thing. If the present law is unconstitutional in the particulars named, Indiana has for nearly a quarter of a century been without a tax law and, for this long period, not one valid assessment has been made.

LAW OF 1872.

1. All property owners, except owners of railroads, are given jurisdiction of local officers from whose decision appeal exists to the State Board of Equalization.

2. "Railroad track" and "rolling stock" defined.

Secs. 6362 *and* 6364, *Revised Statutes of Indiana*, 1881.

3. Full reports of certain property are to be made to the County Auditor, and at the same time statements and schedules of certain facts to the Auditor of State.

Secs. 6367–6369, *R. S, Ind.* 1881.

LAW OF 1891.

1. All property owners, except owners of railroads, are given jurisdiction of local officers from whose decision appeal exists to the State Board of Tax Commissioners.

2. "Railroad track" and "rolling stock" similarly defined.

Secs. 78 *and* 80, *act of* 1891.

3. Precisely the same statement to the same officers at the same time and for the same purpose.

Secs. 83 *and* 85, *acts* 1891.

4. The State Auditor shall lay the statements and schedules before the State Board of Equalization.

6371, *R. S.* 1881.

5. The State Board of Equalization meet annually in the office of the Auditor of State on the third Monday of June, to assess railroad property, etc.

Sec 6402 *R. S.* 1881.

6. The Board shall assess "railroad track" and "rolling stock."

Sec. 6410, *R. S.* 1881.

7. No such provision exists in the old law. The old law provided for notice only by fixing time, place and purpose of the Board's meeting, and remains silent as to hearing.

4. Precisely the same statement shall be laid before the State Board of Tax Commissioners.

Sec. 87, *acts* 1891.

5. The State Board of Tax Commissioners meet annually in the office of the Auditor of State on the first Monday of August, to assess railroad property, etc.

Sec. 129, *acts* 1891.

6. The Board shall assess "railroad track" and "rolling stock."

Sec. 137, *acts* 1891.

7. The Board is given all powers given County Boards, among which is "*the power to hear complaints*," and "*upon due cause shown*, or on its own motion," *correct mistakes*, etc, etc.

Sec. 129, *acts* 1891.

NOTE—The sections above given from the revised Statutes of 1881 are identical, on the points under consideration, with those of the law of 1872.

The railway companies had much larger reasons to attack the old law than the new, so far as its constitutional defects are concerned. The new law cures what defects the old law contained, if any. Acquiescence for decades, until a system or policy becomes firmly fixed, should and does operate powerfully in its favor when its overthrow is attempted by those who have acquiesced in it

so long. Courts will hesitate long before they strike down such a law.

Board v. *Railroad Co.*, 48 N. J. Law, 276.
Hovey v. *State, ex rel*, 119 Ind. 386.
Hovey v. *State, ex rel*, 119 Ind. 395.

V.

ALL VOID IF PART VOID.

Appellants tender certain amounts, admitted to be the taxes legally due the State. *How are they due if the law under and pursuant to which they were assessed, is unconstitutional—is no law?* If the law is void the entire tax fails. Not only this tax is invalid, but EVERY ASSESSMENT FOR MORE THAN TWENTY YEARS IS VOID, and the railroads can recover it at law. The consequences of this decision are tremendous and overwhelming, for the laws of Indiana make ample provision by which

THE RAILROADS MAY RECOVER

Any taxes wrongfully assessed against them.

Secs. 5813, 5814, 5815 *Revised Statutes of Indiana*, 1881.

So that, if the present law is invalid upon the grounds urged, the law under which the railroads have been assessed for over twenty years is also invalid, every assessment made thereunder is wrongful and void, and *the railroads can recover*

every dollar thus wrongfully assessed. They can recover every dollar wrongfully assessed under the law of 1891.

This, in itself, is sufficient answer to this bill for injunction, as was emphatically decided in

State Railroad Tax Cases, 92 U. S. on p. 613.

Under these provisions for recovery of taxes wrongfully assessed, all manner of proof may be produced and thus the Indiana laws make as ample provision for contesting, in the courts, the validity of every assessment made, as was provided by the laws approved in

Davidson v. *New Orleans*, 96 U. S. 97.

Hagar v. *Reclamation District*, 111 U. S. 701,

And, in addition, provides amply for notice and hearing before and after the assessment.

SUMMARY.

To sum up our propositions above maintained:

1. "*Due process of law*" means an orderly method of procedure, applicable to the case, and providing for notice and hearing. In taxation, the notice of the time and place of the assessment and reasonable opportunity to vindicate the correctness of the owner's statement, is due process of law. This and more the Indiana Tax Law of 1891 amply provides.

2. "*The equal protection of the laws*" is not denied, by classification of property for taxation and the application to it of a mode of procedure, peculiarly adapted to it. Mere right of appeal granted to some and denied to others, is not discriminating against the latter. This is the only right given to

others and denied to railroad companies by the Indiana law. And the mode of procedure provided for the assessment of "railroad track" and "rolling stock," is founded in the soundest reason and is admirably adapted to the end.

3. "*Importation of values.*" The law does not, as a matter of law, permit, require or result in the assessment in Indiana of property situated elsewhere; nor did the Board, as a matter of fact, import any value whatever. The schedules required were simply testimony throwing light on the "true cash value" of "railroad track" and "rolling stock" within the State of Indiana, and only by considering the facts therein set out, could its true cash value be determined.

4. *Interstate Commerce* is not abridged by the taxation of its instruments within the borders of the State, nor by estimating the value of that part of a great trunk line lying within a State, by considering it *as* a part of a great trunk line and *as* a carrier of interstate traffic. Nor is the mileage method in determining the value of "rolling stock" an abridgment of, or burden upon, commerce between the States. It is an imperfect method, as are all methods and instruments of human government, but it is the best method yet devised.

5. *This law is an old law*, so far as the features here assailed are concerned, and the railroads of Indiana have acquiesced in it for more than twenty years.

6. *All void if part void.* If part of the assessment attacked is void, all is void; and every

assessment for nearly a quarter of a century has been wrongful, and may be recovered by proceedings, provided by the laws of Indiana. This, in itself, is enough to defeat a bill for injunction.

The people of Indiana, standing at the bar of this great Court, plead for the maintenance of a law by which all are made to bear the burdens of taxation equally.

We ask that the judgment of the Supreme Court of the State of Indiana be in all things affirmed.

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